

State of California

**Board of Equalization
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M e m o r a n d u m

Date: October 16, 2007

To: Honorable Betty T. Yee, Chairwoman
Honorable Judy Chu, Ph.D., Vice-Chair
Honorable Bill Leonard, Second District
Honorable Michelle Steel, Third District
Honorable John Chiang, Controller

From: Kristine Cazadd
Chief Counsel



**Subject: Item J3 –Chief Counsel Matters, October 24, 2007, Board Meeting
Nonsubstantial or Solely Grammatical Changes to Board of
Equalization Rules for Tax Appeals, Chapters 3 and 5**

The Board adopted the Rules for Tax Appeals (Cal. Code Regs., tit., 18, § 5000 et seq.) at the September 12, 2007, Board meeting. In preparing the final statement of reasons and rulemaking file, staff made nonsubstantial and solely grammatical changes to chapters 3 and 5, which were authorized by Government Code section 11346.8, subdivision (c)(1). This memorandum provides background on nonsubstantial or solely grammatical changes and identifies the nonsubstantial or solely grammatical changes made to chapters 3 and 5.

Background Information

Government Code section 11346.8, subdivision (c)(1) authorizes state agencies to make “nonsubstantial or solely grammatical changes” to the text of regulations provided to the public along with notices of rulemaking and the Office of Administrative Law (OAL) has promulgated regulations providing that:

Changes to the original text of a regulation shall be deemed to be “nonsubstantial,” as that term is used in Government Code Section 11346.8, if they clarify without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. (Cal. Code Regs., tit. 1, § 40.)

Section 11346.8, subdivision (c) does not require state agencies to issue additional notices, invite additional comments, hold additional hearings, or respond to public comments in order to make nonsubstantial or solely grammatical changes. State agencies are only required to note nonsubstantial or solely grammatical changes to the original text of proposed regulations in the final text submitted to OAL for publication by the Secretary of State in accordance with California Code of Regulations, title 1, sections 8 and 46.¹ (See also *Californians for Safe Prescriptions v. California State Board of Pharmacy* (1993) 19 Cal.App.4th 1136, which held that the Administrative Procedure Act's notice and public hearing requirements did not apply to insignificant changes the State Board of Pharmacy made to the substantive provisions contained in proposed regulations.)

Nonsubstantial or Solely Grammatical Changes Made to the Rules for Tax Appeals

The original text of the Rules for Tax Appeals was made available to the public on July 27, 2007, and the original text is available on the Board's Website at:

Chapter 1: http://www.boe.ca.gov/regs/pdf/071707_chapter1.pdf
Chapter 2: http://www.boe.ca.gov/regs/pdf/071707_chapter2.pdf
Chapter 3: http://www.boe.ca.gov/regs/pdf/071707_chapter3.pdf
Chapter 4: http://www.boe.ca.gov/regs/pdf/071707_chapter4.pdf
Chapter 5: http://www.boe.ca.gov/regs/pdf/071707_chapter5.pdf

Staff made nonsubstantial or solely grammatical changes to chapters 3 and 5 and will provide the revised language to OAL for publication by the Secretary of State along with the final statement of reasons and final rulemaking file. (See Attachments A and B, respectively.) All of the changes to the original text of chapters 3 and 5 were noted using double strikeouts and double underlines in accordance with California Code of Regulations, title 18, section 46, subdivision (b)(3).

1. Nonsubstantial or Solely Grammatical Changes to Chapter 3

Staff made nonsubstantial or solely grammatical changes to sections 5311, subdivision (b)(5)(B) and (17), 5326.2, subdivision (c), 5326.4, subdivision (h), 5327.6, subdivision (b), 5332.6, subdivision (b), 5340, 5343, subdivision (b), and 5344, subdivisions (c) and (d) of chapter 3 of the Rules for Tax Appeals, which are noted in Attachment A.

¹ Government Code section 11346.8, subdivision (c)(2) authorizes state agencies to make changes that are "sufficiently related to the original text [of proposed regulations] that the public was adequately placed on notice that the change[s] could result from the originally proposed regulatory action," however, state agencies are required to issue additional notices, invite additional public comments for a 15-day period, and then address any comments that are received in the final statements of reasons in order to make such changes.

Staff replaced the word “concessions” with the word “resolutions” in section 5311, subdivision (b)(5)(B), to make the subdivision conform to similar language in subdivision (b)(12)(B). Staff added a specific reference to an “Organizational Clearance Certificate” and capitalized the defined term “Supplemental Clearance Certificate” in subdivision (b)(9)(B). Staff also replaced the word “therefore” with the more grammatically correct word “therefor” in subdivision (b)(17).

Staff inserted an inadvertently omitted reference to “Hearing Summary” in section 5326.2, subdivision (c).

Staff revised section 5326.4, subdivision (h) by replacing the word “report” with the phrase “arrange for court reporting” so that the subdivision conformed to similar and clearer language used in section 5338.4, subdivision (f) regarding the use of court reporters to record appeals conferences.

Staff deleted a typographical error that resulted in a dash being inserted at the beginning of section 5327.6, subdivision (b).

Staff inserted a comma after the words “legal authorities” in section 5332.6, subdivision (b), to increase grammatical clarity.

Staff corrected typographical errors in the cross references to section 5310 in sections 5340 and 5344, subdivisions (c) and (d). Section 5310 was incorrectly referred to as section 3510.

Staff deleted the word “a” from section 5343, subdivision (b), where it had been inadvertently inserted.

2. Nonsubstantial or Solely Grammatical Changes to Chapter 5

Staff also made nonsubstantial or solely grammatical changes to sections 5510, subdivision (d), and 5573, subdivision (c)(1) of chapter 5 of the Rules for Tax Appeals, which are noted in Attachment B. Staff added an inadvertently omitted period to the end of section 5510, subdivision (d) and corrected the cross references to chapter 3 in section 5573, subdivision (c)(1).

Unless the Board disagrees with staff and determines that the changes are incorrect or more than nonsubstantial or solely grammatical, no further action is required from the Board.

If you have any questions, please telephone Tax Counsel III (Supervisor) Bradley Heller at (916) 324-2657.

KC/BH:ef

Approved: _____
Ramon J. Hirsig
Executive Director

cc: Mr. Ramon J. Hirsig MIC:73
Mr. Todd Gillman MIC:70

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Board of Equalization Rules for Tax Appeals

California Code of Regulations
Title 18. Public Revenues
Division 2.1. State Board of Equalization – Rules for Tax Appeals

Note: The Board made “nonsubstantial or solely grammatical” changes to proposed sections 5311, subdivision (b)(5)(B) and (17), 5326.2, subdivision (c), 5326.4, subdivision (h), 5327.6, subdivision (b), 5332.6, subdivision (b), 5340, 5343, subdivision (b), and 5344, subdivisions (c) and (d), which were authorized by Government Code section 11346.8, subdivision (c)(1) and noted using double strikeouts and double underlines in accordance with California Code of Regulations, title 18, section 46, subdivision (b)(3).

Chapter 3: Property Taxes

- Article 1: Application of Chapter and Definitions (§§ 5310-5312)
- Article 2: Petitions for Reassessment of State-Assessed Property and Private Railroad Cars (§§ 5321-5328.5)
- Article 3: Other Property Tax Petitions (§§ 5331-5338.6)
- Article 4: General Board Hearing and Notice Procedures (§§ 5340-5345)

Article 1: Application of Chapter and Definitions

- 5310 Application of Chapter.
- 5311 Definitions.
- 5312 Application of Articles 2, 3, and 4.

5310 Application of Chapter.

(a) This chapter applies to:

- (1) Petitions for reassessment of unitary and nonunitary assessed value and escaped or excessive assessment of state-assessed properties (including petitions for abatement of penalty), petitions for correction of assessment allocation, petitions for reassessment of private railroad car value, and assessment factor hearings for state-assessed properties and private railroad cars;
- (2) Applications for review, equalization, and adjustment of the assessment of publicly-owned lands and improvements under subdivision (g) of section 11 of article XIII of the California Constitution;
- (3) Petitions objecting to the County-Assessed Properties Division’s findings of ineligibility for an organizational clearance certificate under section 254.6 of the Revenue and Taxation Code, denials of claims for supplemental clearance certificates under Revenue and Taxation Code section 214, subdivision (g), and claims for the veteran’s organization exemption under Revenue and Taxation Code section 215.1.

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- (4) Petitions filed with the Board by county assessors under Government Code section 15640 et seq.
- (b) To the extent this chapter does not contain a specific rule or procedure, the rules and procedures in chapter 5 (commencing with section 5510) of this division apply. Where there is a conflict between chapter 5 and this chapter, the provisions of this chapter control.

Note: Authority cited: Government Code sections 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 11251.

5311 Definitions.

- (a) The definitions contained in sections 5511 and 5512 of this division apply to this chapter unless otherwise indicated.
- (b) The following definitions also apply to this chapter:
 - (1) “Appeals Conference” means a conference conducted by the Appeals Division, at which all parties are entitled to attend and at which issues raised in the petition are to be discussed, and if possible, resolved.
 - (2) “Appraisal Data Report” means, for state assesses subject to the provisions of article 2 of this chapter, a document and data sheet that accompany the Board’s value determination required to be mailed to each state assessee between the first day of January and the first day of June of each year. The appraisal data report sets forth the State-Assessed Properties Division’s value recommendation to the Board and a summary of the State-Assessed Properties Division’s value indicators.
 - (3) “County-Assessed Properties Division” means the unit of the Board’s Property and Special Taxes Department responsible for making determinations of eligibility for organizational clearance certificates and supplemental clearance certificates.
 - (4) “County-Assessed Properties Division” means the unit of the Board’s Property and Special Taxes Department responsible for reviewing the assessment practices of county assessors under Government Code section 15640 et seq.
 - (5) A “Hearing Summary” is a written document intended to assist the Board in its consideration of and decision on a petition for which an oral hearing has been scheduled. The Hearing Summary will contain:

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- (A) Sufficient facts, contentions, law, and evidence to enable the Board to conduct an informed oral hearing;
 - (B) A discussion of the appeals conference, if one was held, including any additional information, stipulations, and ~~resolution~~~~concessions~~ resulting therefrom;
 - (C) The Appeals Division's analysis and comments, including questions to be posed to the parties; and
 - (D) Conclusions and recommendations of the Appeals Division after applying the relevant law to all of the relevant information.
- (6) "Organizational Clearance Certificate" means a certificate issued by the Board under Revenue and Taxation Code section 254.6.
- (7) "Party" means:
- (A) For petitions described in section 5310, subdivision (a)(1), the petitioner and the State-Assessed Properties Division;
 - (B) For applications described in section 5310, subdivision (a)(2), the petitioner and the county assessor and tax agency whose assessment is questioned by a petition described in section 5300, subdivision (a)(2);
 - (C) For petitions described in section 5310, subdivision (a)(3), the petitioner and the County-Assessed Properties Division;
 - (D) For petitions described in section 5310, subdivision (a)(4), the petitioner and the County-Assessed Properties Division.
- (8) "Petition" means a petition or application described in section 5310.
- (9) "Petitioner" means an individual or entity that filed a petition described in section 5310, and the individual or entity's authorized representative where appropriate, and includes:
- (A) A county, city, city and county, or municipal corporation that filed a petition with the Board under subdivision (g) of section 11 of article XIII of the California Constitution.
 - (B) The claimant of an Organizational Clearance Certificate for the property tax welfare exemption under Revenue and Taxation Code section 254.6 or ~~Supplemental eClearance eCertificate~~ under Revenue and Taxation Code section 214, subdivision (g). For purposes of a petition from the denial of a Supplemental Clearance Certificate under

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Revenue and Taxation Code section 214, subdivision (g), the limited partnership is the petitioner.

(C) The county assessor and the taxing agency that filed a petition described in section 5310, subdivision (a)(4).

(10) “Respondent” means:

(A) For petitions described in section 5310, subdivision (a)(1), the State-Assessed Properties Division;

(B) For applications described in section 5310, subdivision (a)(2), the county assessor and tax agency whose assessment is questioned by a petition described in section 5310, subdivision (a)(2);

(C) For petitions described in section 5310, subdivision (a)(3), the County-Assessed Properties Division;

(D) For petitions described in section 5310, subdivision (a)(4), the County-Assessed Properties Division.

(11) “Sample finding” refers to the sampling of assessments from the county assessment roll under Government Code section 15640, subdivision (c).

(12) “Summary Decision” means a written document intended to assist the Board in its consideration of and decision on a petition without an oral hearing. The Summary Decision must contain:

(A) Sufficient facts, contentions, law, and evidence to enable the Board to evaluate the merits of the petition;

(B) A discussion of the appeals conference or other Appeals Division review, including any findings, stipulations, and resolutions resulting therefrom; and

(C) The Appeals Division’s analysis and recommended decision.

(13) “Supplemental Clearance Certificate” means a certificate issued by the Board under Revenue and Taxation Code section 214, subdivision (g).

(14) “Tax and Fee Programs Division” means the unit of the Board’s Legal Department responsible for representing the Department, as defined in Chapter 5, General Board Hearing Procedures, in responding to petitions described in section 5310, subdivision (a)(1), (a)(3), and (a)(4).

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- (15) “State-Assessed Properties Division” means the unit in the Board’s Property and Special Taxes Department responsible for determining value indicators and recommending values of property under the Board’s assessment jurisdiction and for administering the Board’s state assessment responsibilities.
- (16) “State-Assessed Properties Division’s Analysis” means a written summary that sets forth an analysis of all of the issues raised in the petition and the State-Assessed Properties Division’s recommendation.
- (17) “Written Findings and Decision” means a document prepared by the Appeals Division that sets forth the Board’s decision on a petition and the supporting reasons therefore.

Note: Authority cited: Government Code sections 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 11251.

5312 Application of Articles 2, 3, and 4.

- (a) State-Assessed Property and Private Railroad Cars. The provisions of article 2 of this chapter apply to petitions described in section 5310, subdivision (a)(1), and do not apply to any other petitions.
- (b) Other Property Tax Petitions. The provisions of article 3 of this chapter apply to petitions described in section 5310, subdivision (a)(2), (a)(3), and (a)(4), and do not apply to any other petitions.
- (c) General Board Hearing Procedures. The provisions of article 4 of this chapter apply to all petitions described in section 5310.

Note: Authority cited: Government Code section 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 11251.

Article 2: Petitions for Reassessment of State-Assessed Property and Private Railroad Cars

Subchapter 1: Application of Article

5321 Application of Article.

5321 Application of Article.

This article applies to petitions for reassessment of unitary and nonunitary assessed value and escaped or excessive assessment of state-assessed properties (including petitions for abatement of penalty), petitions for correction of assessment allocation, petitions for

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reassessment of private railroad car value, and assessment factor hearings for state-assessed properties and private railroad cars.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code sections 721, 721.5, 747, 759, 11251. History: California Code of Regulations, title 18, section 5040.

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Subchapter 2: Assessments and Assessment Factor Hearings

5322 Information Available to Assessee; Assessment Factor Hearings.

5322.5 Validity of Assessment.

5322 Information Available to Assessee; Assessment Factor Hearings.

- (a) Each year, the State-Assessed Properties Division must perform capitalization rate studies and develop value indicators applicable to the valuation of the unitary property of each state assessee. The capitalization rate study, the value indicators, and all other appraisal data, calculations, and information developed or used by the State-Assessed Properties Division with respect to the valuation of the assessee's state-assessed property must be made available to the state assessee upon a written request to the Chief of the State-Assessed Properties Division.
- (b) At the discretion of the Board, but generally at the Board's February meeting in Sacramento, the Board may annually hold Assessment Factor Hearings to receive public testimony on issues relating to capitalization rates and other factors affecting values of state-assessed property and private railroad cars. At least 30 days before the Assessment Factor Hearing date, state assessee and private railroad car taxpayers, or other persons wishing to be listed on the agenda, must notify the Chief of Board Proceedings if they intend to make an oral presentation at the hearing. Testimony of persons who do not notify the Chief of Board Proceedings as set forth above may be heard after those on the agenda have completed their oral presentations. The Board may place reasonable time limits on any presentation. In lieu of oral presentations, state assessee, private railroad car taxpayers, or other persons may submit written presentations to the Chief of Board Proceedings no later than the date of the hearing.
- (c) At the discretion of the Board, but generally at the Board's April meeting in Sacramento, every state assessee may be given an opportunity to make an oral presentation to the Board in a public meeting regarding the value indicators to be used to value its state-assessed unitary property, or the value of its property. In lieu of an oral presentation, a state assessee may submit a written presentation to the Chief of Board Proceedings no later than the date of the hearing.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code sections 110, 721, 721.5, 722, 723, 724, 725, 731, 746, 11251, 11291, 11292, 11293. History: California Code of Regulations, title 18, sections 5041, 5043.

5322.5 Validity of Assessment.

Validity of Assessment or Taxes. The failure to receive any notice required to be given by the Board or the failure of the Board to complete any action by a date specified under this article does not affect the validity of an assessment or the validity of any taxes levied pursuant thereto.

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Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code section 725.

Subchapter 3: Contents of Petitions and Filing Deadlines

- 5323 Time for Filing of Petitions
- 5323.2 Filing Requirements and Procedures for Contesting Private Railroad Car Jeopardy Assessments.
- 5323.4 Contents of the Petition.
- 5323.6 Submission of Petition.
- 5323.8 Duplicate Petitions.

5323 Time for Filing of Petitions

- (a) Unitary Value or Penalty. If a state assessee disagrees with the value or penalty determined by the Board as set forth in the Notice of Unitary Assessed Value, the assessee must file a Petition for Reassessment of Unitary Value by July 20 of the calendar year in which the Notice of Unitary Assessed Value was issued.
- (b) Correction of Assessment Allocation. If a state assessee disagrees with an assessment allocation, the assessee must file a Petition for Correction of Assessment Allocation by July 20 of the calendar year in which the Notice of Assessment Allocation was issued.
- (c) Nonunitary Value or Penalty. If a state assessee disagrees with the value or penalty determined by the Board as set forth in the Notice of Nonunitary Assessed Value, the assessee must file a Petition for Reassessment of Nonunitary Value by September 20 of the calendar year in which the Notice of Nonunitary Value was issued.
- (d) Escaped/Excessive Assessment. If a state assessee disagrees with the value or penalty determined by the Board as set forth in the notice of escaped or excessive assessment, the assessee must file a petition for reassessment of escaped or excessive assessment no later than the date stated in the notice of escaped or excessive assessment mailed to the assessee at its address shown in the records of the Board.
- (e) Private Railroad Cars.
 - (1) If an owner or assessee disagrees with a value or penalty determined by the Board, the owner or assessee must file a Petition for Reassessment of Private Railroad Car Value on or before September 20 (or October 5, if extended in writing by the Board or its designee) of the year in which the Notice of Private Railroad Car value is issued.
 - (2) If the Board fails to complete the private railroad car tax assessments on or before August 1 but completes the assessments in the following month under section 11651.5 of the Revenue and Taxation Code, the date for filing a petition for reassessment will be extended to October 20 (or November 4, if extended by the Board or its designee).

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- (3) For any assessment made outside the regular assessment period, the Petition for Reassessment must be filed on or before the 50th day following the notice of the assessment.
- (4) If a petition is not timely received, the Board may consider the petition to be a claim for refund.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code sections 731, 732, 741, 758, 11338, 11339, 11651.5. History: California Code of Regulations, title 18, section 5040.

5323.2 Filing Requirements and Procedures for Contesting Private Railroad Car Jeopardy Assessments.

The contesting of Private Railroad Car Tax jeopardy assessments is governed by the procedures set forth in chapter 2, article 2C of this division, except that if any of those procedures is inconsistent with Revenue and Taxation Code section 11351 et seq., the Revenue and Taxation Code sections control.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code sections 11351, 11352, 11353, 11354.

5323.4 Contents of the Petition.

- (a) All petitions must conform to the requirements in this section.
- (b) A valid and complete petition must:
 - (1) Be in writing and state the name and address of the petitioner, the Board-adopted value, the petitioner's opinion of value, and the precise elements of the Board's valuation or penalty that petitioner is contesting (including, for nonunitary property, the property identification information and location).
 - (2) State whether the petition constitutes a claim for refund under Revenue and Taxation Code section 5148, subdivision (f).
 - (3) State the facts relied upon to support the requested change in value and include supporting documents, including appraisal reports, financial studies, and any other materials relevant to determining the value of the petitioner's property or reasons why the penalty should be abated.
 - (4) State whether any or all of the following are requested: an appeals conference, oral hearing, or Written Findings and Decision.

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- (5) Be signed by the petitioner or by an authorized representative. If the petition is signed by an agent, including an attorney licensed to practice law in the State of California, the agent must be authorized by the petitioner before the time the petition is filed. Both the petitioner's mailing address and the agent's mailing address must be provided in the petition. The following language must be contained in the signature block of the petition:

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing and all information herein, including any accompanying statements or documents, is true, correct, and complete to the best of my knowledge and belief and that I am: (1) an officer, partner, or employee of the petitioner authorized to sign this petition; (2) an agent authorized by the petitioner; or (3) an agent who is any attorney licensed to practice law in the State of California, State Bar No. _____, who has been retained by the petitioner and has been authorized by the petitioner to file this petition.

- (6) Be accompanied by a statement of authorization, if required as specified herein, or as specified in section 5323.8, Duplicate Petitions. If the petition is signed by an agent, other than an attorney licensed to practice law in the State of California, a statement of authorization, as described herein, or a power of attorney, as defined in chapter 5, General Board Hearing Procedures, is required. A statement of authorization must be in writing and must include the following information:

- (A) Name and address of the petitioner;
- (B) Petitioner's State Board of Equalization company identification number;
- (C) Name, address, and telephone and facsimile numbers of the agent;
- (D) Statement that the agent is authorized to file the petition and represent the petitioner in the petition; and
- (E) Signature of an officer, partner, or an employee who has been designated by petitioner in writing to sign such statement on behalf of the petitioner.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code sections 741, 744, 747, 11340. History: California Code of Regulations, title 18, section 5041.

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5323.6 Submission of Petition.

The original petition and supporting documents, together with 10 copies thereof, must be submitted by mail or in person to the Chief of Board Proceedings as provided in section 5335. A compact disc containing an electronic file conforming to the requirements of the Board Proceedings Division will be accepted in lieu of the copies if submitted with the original petition.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code section 741. History: California Code of Regulations, title 18, section 5041.

5323.8. Duplicate Petitions.

- (a) In the event duplicate petitions are filed with the Chief of Board Proceedings, the Chief of Board Proceedings will determine which petition was authorized by petitioner.
- (b) The Chief of Board Proceedings will contact the petitioner and/or the agent who filed the duplicate petitions by telephone, electronic mail, or facsimile machine and by registered or certified mail with return receipt, and will allow 10 days for a written response. In the event no written response is received after 10 days, the first petition received will be accepted and all other petitions will be rejected as duplicate petitions.
- (c) For purposes of this regulation, “duplicate petition” means a petition filed by the petitioner, or its agent on its behalf, subsequent to the petition previously filed by or on behalf of the same petitioner for the same assessment year at issue. A subsequent petition that seeks to correct or supplement a previously filed petition will not be considered a duplicate petition for purposes of this regulation.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code section 741. History: California Code of Regulations, title 18, section 5041.

Subchapter 4: Timeliness, Acceptance, and Dismissal of Petitions

5324 Timeliness of Petition.

5324.2 Extensions of Time.

5324.4 Accepting or Rejecting a Petition.

5324.6 Submission of Additional Supporting Documents by Petitioner.

5324.8 Dismissal of Petition.

5324 Timeliness of Petition.

- (a) A petition is considered filed timely if it is addressed and transmitted to the address set forth in section 5335, or deposited personally at the headquarters office of the

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Board in Sacramento, no later than the date provided in section 5323 or, if an extension is received, section 5324.2.

- (b) Timely performance and mailing date will be determined under the provisions of chapter 5 of this division.
- (c) If the Chief of Board Proceedings determines that the Board requires original versions of documents filed by electronic or facsimile transmission, the original documents must be mailed or delivered to the address set forth in section 5335 or deposited personally at the headquarters office of the Board in Sacramento no later than the business day immediately following the electronic or facsimile transmission date.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code sections 733, 741, 743, 746, 747, 758, 759, 11338, 11339. History: California Code of Regulations, title 18, sections 5041, 5042.

5324.2 Extensions of Time.

- (a) Filing of Petition. The Chief Counsel may extend the deadline to file a petition once for a period not to exceed 15 days, provided that the petitioner files a written or electronic request for the extension with the Chief of Board Proceedings no later than the due date of the petition.
- (b) Supporting Documents. The Chief Counsel may grant a reasonable extension of time for reasonable cause to allow the petitioner to file supporting documentation, provided that the petitioner files a written or electronic request for the extension with the Chief of Board Proceedings no later than the due date of the petition.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: 733, 746, 759, 11338.

5324.4 Accepting or Rejecting a Petition.

- (a) Determination that the Petition is Valid, Complete, and Timely. Upon receipt of the petition, the Chief of Board Proceedings will determine whether the petition is valid and complete, including whether the petition is timely. If any question arises as to the timeliness of a petition or whether a petition is valid and complete, the Chief of Board Proceedings will refer the petition to the Chief Counsel.
- (b) Accepting the Petition. If the Chief of Board Proceedings, or the Chief Counsel, determines that the petition is valid and complete and that the petition is timely, or that there is a genuine, material issue relating to validity, completeness or timeliness, the Chief of Board Proceedings must accept the petition. The Chief of Board Proceedings will provide written acknowledgement of the acceptance to the petitioner and the Respondent.

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- (c) Issues relating to Validity, Completeness, and Timeliness. If the Chief Counsel determines that there is a genuine, material issue relating to validity, completeness, or timeliness, such matters will be considered to be at issue in the petition and will be decided by the Board.
- (d) Rejecting the Petition. If the Chief of Board Proceedings and the Chief Counsel determine that the petition is not valid or complete or that the petition is not timely, and that there is no genuine, material issue relating to validity, completeness, or timeliness, the Chief of Board Proceedings must reject the petition. The Chief of Board Proceedings must provide written notification to the petitioner and the Respondent.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code sections 733, 746, 759, 11338. History: California Code of Regulations, title 18, section 5042.

5324.6 Submission of Additional Supporting Documents by Petitioner.

- (a) A petitioner's appraisal reports, financial studies, and other materials relevant to value may not be presented as evidence at the hearing unless such documents were provided to the Chief of Board Proceedings at the time the petitioner filed its petition or within a subsequent time extension, or was requested by and timely provided to the State-Assessed Properties Division or the Appeals Division. However, any Board Member may, before or at the hearing, permit or request the submission of evidence that was not previously filed with the Board.
- (b) The State-Assessed Properties Division or the Appeals Division may also request additional evidence in order to evaluate the petitioner's opinion of value as set forth in its petition. The State-Assessed Properties Division or the Appeals Division may request such evidence in writing or by electronic means to the petitioner or its authorized representative and provide a deadline for the submission of such additional evidence by petitioner.
- (c) All evidence, including both information and exhibits, must be accompanied by a declaration signed under penalty of perjury that the information contained in the petitioner's submitted evidence is true, correct, and complete to the best knowledge and belief of the person submitting the documents.
- (d) Except as specified above, any submitted evidence received by the Chief of Board Proceedings from the petitioner subsequent to the filing of the petition and after the expiration of the deadline applicable to such submission will be returned to the petitioner by the Chief of Board Proceedings.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code sections 741, 747, 759, 11340. History: California Code of Regulations, title 18, sections 5041, 5079.

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5324.8 Dismissal of Petition.

- (a) A petition will be dismissed if:
 - (1) The petition is not timely; or
 - (2) The petitioner fails to timely cure the defects in an invalid or incomplete petition.
- (b) The Chief of Board Proceedings will send written notice of the dismissal and supporting reasons therefore to the petitioner.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code sections 733, 746, 759, 11338. History: California Code of Regulations, title 18, section 5042.

Subchapter 5: Prehearing Meetings and Review of Petitions

5325 Prehearing Meeting and Exchange of Information Between State-Assessed Properties Division, Tax and Fee Programs Division, and Petitioner.

5325.4 Petitions Resolved Before Appeals Division Review.

5325.6 Prehearing Review of All Other Petitions.

5325 Prehearing Meeting and Exchange of Information Between State-Assessed Properties Division, Tax and Fee Programs Division, and Petitioner.

- (a) If requested by petitioner, the State-Assessed Properties Division and the Tax and Fee Programs Division will meet with the petitioner, either in person or by other means convenient to both parties, before the scheduled hearing date. The purpose of the meeting or meetings is to exchange relevant information and evidence, identify issues, and, if possible, enter into stipulations to resolve all or some of the issues.
- (b) At any time, the State-Assessed Properties Division or the Tax and Fee Programs Division may request additional information from the petitioner to assist in resolving any issue raised by the petitioner.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code sections 741, 747, 11340.

5325.4 Petitions Resolved Before Appeals Division Review.

With respect to all petitions as to which the petitioner and the State-Assessed Properties Division have agreed to a joint recommendation on a proposed resolution of all issues presented in the petition before the petitioner's appeals conference or petitioner's reply brief, if no appeals conference is scheduled, the Tax and Fee Programs Division will prepare and submit the "State-Assessed Properties Division's Recommendation for

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Property Tax Petition” on the “Property Tax Matters Nonappearance Calendar” to the Chief of Board Proceedings. This recommendation will include a brief analysis of the petition and the related supporting documents, if any, as well as a statement confirming petitioner’s agreement with such recommendation. The Board, however, is not required to adopt the recommendation or take the recommended Board action.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code sections 741, 747, 11340.

5325.6 Prehearing Review of All Other Petitions.

- (a) The Appeals Division will review and prepare a Hearing Summary or Summary Decision for all petitions for which the Tax and Fee Programs Division does not prepare the recommendation described in section 5325.4.
- (b) If there has been a partial or complete resolution of issues between petitioner and the State-Assessed Properties Division after the Appeals Division has issued its Hearing Summary or Summary Decision, the Appeals Division will draft a Revised Hearing Summary or Revised Summary Decision if time permits. The Revised Hearing Summary or Revised Summary Decision will state:

- (1) The issues which have been resolved;
- (2) Staff’s revised analysis and/or recommendation; and
- (3) The issues remaining for decision by the Board, if any.

The case will remain on the agenda for Board action.

- (c) At any time, the Appeals Division may request additional information or analysis from the petitioner or the State-Assessed Properties Division to assist in resolving any issue to be decided by the Board.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code sections 741, 747, 11340.

Subchapter 6: Briefing Schedules and Appeals Conferences

- 5326 General Briefing Procedures For Petitions Reviewed by the Appeals Division.
- 5326.2 Briefing Schedule If No Appeals Conference Is Scheduled.
- 5326.4 General Appeals Conference Procedures.
- 5326.6 Scheduling of Appeals Conference; Briefing Schedule for Petitions for which an Appeals Conference is Scheduled.

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5326 General Briefing Procedures For Petitions Reviewed by the Appeals Division.

- (a) A valid and complete petition as defined in section 5323.4 is considered the petitioner's opening brief.
- (b) The State-Assessed Properties Division's Analysis is the State-Assessed Properties Division's written response to the petition.
- (c) The petitioner's reply to the State-Assessed Properties Division's Analysis is optional.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code sections 741, 747, 11340.

5326.2 Briefing Schedule If No Appeals Conference Is Scheduled.

- (a) The State-Assessed Properties Division's Analysis will be submitted to the Chief of Board Proceedings no less than 45 days before the date on which the petition is scheduled for Board action.
- (b) The petitioner may submit to the Chief of Board Proceedings a reply to the State-Assessed Properties Division's Analysis within 15 days after the Board Proceedings Division mails the State-Assessed Properties Division's Analysis to the petitioner. The petitioner may not submit new or additional evidence with its reply brief unless the State-Assessed Properties Division or Appeals Division previously requested new or additional information, but the petitioner may dispute or agree with the analysis and recommendations set forth in the State-Assessed Properties Division's Analysis.
- (c) At least 10 days before the Board meeting date for which the petition is scheduled for Board action, the Appeals Division will submit a Hearing Summary or Summary Decision to the Chief of Board Proceedings.
- (d) The Chief Counsel, upon a showing of reasonable cause, may grant an extension of the time provided in subdivisions (a), (b) and (c) above.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code sections 741, 747, 11340.

5326.4 General Appeals Conference Procedures.

- (a) An appeals conference will be held if requested by any of the following:
 - (1) By the petitioner in the petition;
 - (2) By the State-Assessed Properties Division no later than August 15 for petitions for reassessment of unitary value or October 15 for petitions for reassessment of non-unitary value;

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- (3) By the Assistant Chief Counsel of the Appeals Division; or
 - (4) By any Board Member.
- (b) If an appeals conference is requested under subdivision (a)(3) or (a)(4), or for a petition for reassessment of non-unitary value under subdivision (a)(2), the Chief Counsel may modify the time periods provided in sections 5326.6 and 5327.
 - (c) An appeals conference will consider all issues raised in the petition. The purpose of an appeals conference is to obtain additional facts and evidence, obtain stipulations of fact, and narrow questions of law, in order to facilitate a more efficient and productive oral hearing or other Board action on the petition.
 - (d) The parties may attend the appeals conference in person or by telephone. The Appeals Division will attempt to conduct the appeals conference at a time and in a manner that is convenient for both the petitioner and the State-Assessed Properties Division.
 - (e) The petitioner and the State-Assessed Properties Division will be notified of the date, time, and place of the appeals conference in writing or by electronic mail or facsimile. The petitioner and the State-Assessed Properties Division must confirm their participation in writing or by electronic mail or facsimile. Once the parties agree to attend an appeals conference, the Appeals Division, at its discretion, may choose to hold the appeals conference at the stated date, time, and place even if one party does not appear.
 - (f) An attorney from the Appeals Division (conference holder) will conduct the appeals conference. To the extent practicable, the conference holder will ensure that the appeals conference is informal and non-adversarial in nature.
 - (g) The petitioner must be represented at the conference by an agent or employee who is thoroughly familiar with the facts and issues and has been authorized to represent the petitioner. The State-Assessed Properties Division will be represented by an appraiser.
 - (h) The conference holder will not record, videotape, or ~~report~~ arrange for court reporting of the appeals conference. Any party may arrange for the appeals conference to be recorded or reported, at that party's expense. If the appeals conference is recorded or reported, a transcript must be made available to all participants. A recording or transcript of an appeals conference becomes a disclosable public record, if and when the petition being discussed on the record or transcript becomes a disclosable public record under chapter 5 of this division.
 - (i) If an appeals conference is scheduled, the Chief Counsel may shorten the time period provided in section 5327.4, subdivision (c), for issuing the notice of hearing.

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Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code sections 741, 747, 11340.

5326.6 Scheduling of Appeals Conference; Briefing Schedule for Petitions for which an Appeals Conference is Scheduled.

- (a) The Appeals Division will generally hold an appeals conference at least 30 days before the Board meeting at which the petition is scheduled for hearing or other Board action. The Appeals Division has broad discretion in determining the briefing schedules and the deadlines for submitting additional information.
- (b) The State-Assessed Properties Division's Analysis must be submitted to the Chief of Board Proceedings no later than 35 days before the scheduled appeals conference date.
- (c) The petitioner must submit to the Chief of Board Proceedings a reply to the State-Assessed Properties Division's Analysis within 15 days after the Board Proceedings Division mails the State-Assessed Properties Division's Analysis to the petitioner. The petitioner may not submit new or additional evidence with its reply brief unless the State-Assessed Properties Division or Appeals Division conference holder previously requested new or additional information, but the petitioner may dispute or agree with the analysis and recommendations set forth in the State-Assessed Properties Division's Analysis.
- (d) The Appeals Division may request additional information or briefing to be provided by the petitioner or the State-Assessed Properties Division before, during, or after the Appeals conference.
 - (i) The Appeals Division should provide written confirmation of its request for additional information within two business days of the request.
 - (ii) Unless otherwise permitted by the Appeals Division, all requested information must be provided no later than seven days after the date of the request.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code sections 741, 747, 11340.

Subchapter 7: Preparing Summaries, Scheduling Hearings, and Distributing Documents

- 5327 Appeals Division Hearing Summary or Summary Decision.
- 5327.4 Oral Hearings – Scheduling of Hearings.
- 5327.6 Distribution of Documents.

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5327 Appeals Division Hearing Summary or Summary Decision.

- (a) Except as provided in subdivision (b), the Appeals Division will submit to the Chief of Board Proceedings a Hearing Summary or Summary Decision no later than 10 days before the Board hearing at which the petition is scheduled for hearing or other Board action.
- (b) The Chief Counsel, upon a showing of reasonable cause, may grant an extension of a reasonable period of time for the issuance of the Hearing Summary or the Summary Decision. For purposes of this section “reasonable cause” includes, but is not limited to, an appeals conference being held less than 30 days before the hearing at which the petition is scheduled for hearing or other Board action.
- (c) If prepared, a Revised Hearing Summary or Revised Summary Decision will be promptly submitted to the Chief of Board Proceedings by the Appeals Division.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code sections 741, 747, 11651.

5327.4 Oral Hearings – Scheduling of Hearings.

- (a) The Board must hear and decide all petitions for reassessment of unitary or nonunitary values and correction of allocated values by December 31 of the year in which the notice of assessment was issued and render its decisions no later than December 31 that year, except for petitions of escape assessments described in Revenue and Taxation Code section 758.
- (b) The Board must hear petitions for reassessment of private railroad car values and render its decisions by January 31 of the year following the year in which the notice was issued. If the assessment was made outside the regular assessment period, the Board must hear the petition within 90 days of the date on which the petition was filed and render its decision within 45 days of the date of the hearing on the petition.
- (c) If petitioner requests an oral hearing in its petition, the Chief of Board Proceedings will mail a Notice of Board Hearing to the petitioner at least 45 days before the scheduled hearing date.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code sections 734, 741, 742, 748, 749, 758, 11338, 11339, 11341

5327.6 Distribution of Documents.

The Chief of Board Proceedings will promptly distribute the following documents to the petitioner, Board Members, the State-Assessed Properties Division, the Tax and Fee

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Programs Division, and the Appeals Division, as appropriate (the documents may be distributed separately):

- (a) Petition and supporting documentation;
- (b) -State-Assessed Properties Division's Analysis;
- (c) Petitioner's Reply Brief, if any; and
- (d) Appeals Division's Hearing Summary or Summary Decision (and Revised Hearing Summary or Summary Decision, if prepared).

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code sections 731, 732, 733, 741, 742, 743, 744, 746, 747, 748, 11338, 11339, 11340, 11353. History: California Code of Regulations, title 18, section 5041.

Subchapter 8: Consolidation and Withdrawal of Petitions

- 5328 Consolidation of Petitions into a Single Hearing.
- 5328.5 Withdrawal of a Petition.

5328 Consolidation of Petitions into a Single Hearing.

- (a) Multiple petitions may be consolidated for hearing or decision as provided in chapter 5 of this division.
- (b) If petitions are consolidated, the State-Assessed Properties Division's will draft a single Analysis to address and analyze the issues presented in all of the petitions. At the hearing, the Board may grant additional time, in equal amounts, to the petitioners' representative(s) and the State-Assessed Properties Division to present their respective cases. The Appeals Division will draft one Hearing Summary for all of the consolidated petitions.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code sections 731, 732, 733, 741, 742, 743, 744, 746, 747, 748.

5328.5 Withdrawal of a Petition.

A petitioner may withdraw its petition at any time, up to and including the date of the scheduled Board hearing, by notifying the Chief of Board Proceedings in writing, including by electronic mail or facsimile.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651. Reference: Revenue and Taxation Code section 733.

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Article 3: Other Property Tax Petitions

Subchapter 1: Application of Article

5331 Application of Article.

5331 Application of Article.

This article applies to:

- (a) Applications for review, equalization, and adjustment of the assessment of publicly-owned lands and improvements filed under subdivision (g) of section 11 of article XIII of the California Constitution;
- (b) Petitions objecting to the County-Assessed Properties Division's findings of ineligibility for an organizational clearance certificate under section 254.6 of the Revenue and Taxation Code, denials of claims for supplemental clearance certificates under Revenue and Taxation Code section 214, subdivision (g), and claims for the veteran's organization exemption under Revenue and Taxation Code section 215.1; and
- (c) Petitions filed with the Board by county assessors under Government Code section 15640 et seq.

Note: Authority cited: Article XIII, section 11 of the California Constitution; Government Code sections 15606, 15640. Reference: Government Code section 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 1840.

Subchapter 2: Appeal of Assessment of Publicly-Owned Property – Contents of Applications, Filing Deadlines, and Board-Appraised Property

5332 Time of Filing of Application.

5332.4 Contents of Application.

5332.6 Submission of Application and Board-Appraised Property.

5332 Time of Filing of Application.

- (a) If any county, city, city and county, or municipal corporation wants to secure a review, equalization, or adjustment of the assessment of its property by the Board under subdivision (g) of section 11 of article XIII of the California Constitution, it must file an application with the Board on or before the later of:
 - (1) July 20 of the year in which the assessment is made if the assessment appealed is made during the regular period for such assessments; or

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- (2) Within two weeks after the completion and delivery by the county assessor of the local roll containing the assessment to the county auditor as provided in Revenue and Taxation Code section 617.
- (b) If the assessment appealed is made outside the regular period for such assessments, the application must be filed with the Board within 60 days from the date the tax bill was mailed to the applicant.
- (c) An application is filed timely if it is mailed to or received at the address provided in section 5335 within the time specified by this section.
- (d) Failure to provide a timely application bars the applicant from relief under subdivision (g) of section 11 of article XIII of the California Constitution.

Note: Authority cited: Article XIII, section 11 of the California Constitution; Government Code section 15606. Reference: Revenue and Taxation Code section 1840. History: California Code of Regulations, title 18, sections 5050, 5052, 5074.5.

5332.4 Contents of Application.

Every application must:

- (a) Be in writing;
- (b) Be authorized by the governing body of the county, city, city and county, or municipal corporation seeking relief;
- (c) Include the official document authorizing the application;
- (d) Show the facts claimed to require action by the Board;
- (e) Include a statement of legal authorities, which includes relevant statutes and regulations;
- (f) Indicate whether a written findings and decision is desired; and
- (g) Be signed by petitioner or an authorized representative of the petitioner.

Note: Authority cited: Article XIII, section 11 of the California Constitution; Government Code section 15606. Reference: Revenue and Taxation Code section 1840. History: California Code of Regulations, title 18, sections 5051, 5052.

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5332.6 Submission of Application and Board-Appraised Property.

- (a) The application and supporting documents, including the proof of filing under subdivision (b), must be submitted by mail or in person to the Chief of Board Proceedings as provided in section 5335.
- (b) A copy of the application, together with its separate statement of legal authorities, must also be filed by the applicant with the county assessor whose assessment is questioned and with the county board of supervisors. A proof of filing with the county assessor and the county board of supervisors must be enclosed with the application filed with the Board.
- (c) Board-Appraised Property. If a property that has been appraised by the State-Assessed Properties Division becomes the subject of a proceeding under this article, both parties to the proceedings will be informed of the fact that the appraisal has been made.
 - (1) Each party, upon request, will have access to the appraisal records.
 - (2) Either party or the Board may call the State-Assessed Properties Division as a witness and may offer the appraisal records as an exhibit.
- (d) A party desiring to call an employee of the State-Assessed Properties Division as a witness must notify the Chief of Board Proceedings of its intention to call such witness at least ten days before the hearing.

Note: Authority cited: Article XIII, section 11 of the California Constitution; Government Code section 15606. Reference: Revenue and Taxation Code section 1840. History: California Code of Regulations, title 18, sections 5052, 5056.

Subchapter 3: Contents of Property Tax Welfare and Veterans' Organization Exemption Petitions and Filing Deadlines

5333 Time for Filing of Petitions.

5333.4 Contents of Petition.

5333.6 Submission of Petition.

5333 Time for Filing of Petitions.

- (a) A petitioner has 60 days from the date of mailing of a final notice denying a claim for an Organizational Clearance Certificate or Supplemental Clearance Certificate or from the date of mailing of a notice of revocation of an Organizational Clearance Certificate or, Supplemental Clearance Certificate to petition the Board for hearing on the denial of the claim or revocation of the certificate.
- (b) A petition is timely if it is mailed to or received at the headquarters office of the Board within the time specified by subdivision (a).

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Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 214, 245.6, 270. History: California Code of Regulations, title 18, section 5062.

5333.4 Contents of Petition.

The petition must:

- (a) Be in writing and state all of the specific grounds upon which qualification is claimed;
- (b) Include all documents the petitioner wishes the Board to consider in deciding the petition;
- (c) Indicate whether an oral hearing is desired;
- (d) Indicate whether a written findings and decision is desired; and
- (e) Be signed by petitioner or an authorized representative of the petitioner. The Chief Counsel may require the representative to demonstrate the representative's authority to represent the petitioner.

Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 214, 245.6, 270. History: California Code of Regulations, title 18, section 5063.

5333.6 Submission of Petition.

The original petition and supporting documents must be submitted by mail or in person to the Chief of Board Proceedings as provided in section 5335.

Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 214, 245.6, 270. History: California Code of Regulations, title 18, section 5063.

Subchapter 4: Contents of Property Tax Sampling Program Petitions and Filing Deadlines

5334 Time for Filing of Petitions.

5334.4 Contents of the Petition.

5334.6 Submission of Petition.

5334 Time for Filing of Petitions.

- (a) Any county assessor may file a petition to appeal appraisals made within his or her county where differences have not been resolved before completion of the field review of county assessment procedures by the County-Assessed Properties Division.

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- (b) A petition must be filed within 30 days from the date that the Deputy Director of the Property and Special Taxes Department mails the final notice of sample finding to the county assessor.
- (c) The determination contained within the final notice of sample finding becomes final if a petition is not filed within the time period provided in subdivision (b).
- (d) A petition or supporting document is timely if it is mailed to or received at the address provided in section 5335 within the time specified in subdivision (b).

Note: Authority cited: Government Code sections 15606; 15640. Reference: Government Code sections 15640, 15645.

5334.4 Contents of the Petition.

- (a) The petition must:
 - (1) Be in writing;
 - (2) Identify the assessor's parcel number or assessment number and sample item number the county assessor is contesting;
 - (3) State the specific issue(s) being appealed and the specific adjustment requested;
 - (4) Indicate whether an oral hearing is desired; and
 - (5) Be signed by the county assessor or his or her authorized representative.
- (b) The filing of a completed form provided by the Board for use as a petition will satisfy the requirements of subdivision (a).
- (c) The county assessor is required to submit any supporting evidence with the petition.

Note: Authority cited: Government Code sections 15606; 15640. Reference: Government Code sections 15640, 15645.

5334.6 Submission of Petition.

The petition and supporting documents must be submitted by mail or in person to the Chief of Board Proceedings as provided in section 5335.

Note: Authority cited: Government Code sections 15606; 15640. Reference: Government Code sections 15640, 15645.

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Subchapter 5: Filing and Distribution of Petitions, Briefs, and Other Documents

5335 Submission of Petitions, Briefs, and Related Documents.

5335.4 Timely Performance; Mailing Date.

5335.6 Distribution of Documents.

5335 Submission of Petitions, Briefs, and Related Documents.

- (a) Original petitions, briefs, and related documents must be submitted by mail or in person to the Chief of Board Proceedings, at the mailing address provided in chapter 5 of this division.
- (b) Petitions, briefs, and related documents may be filed electronically under this section only if they are transmitted to and received by the Chief of Board Proceedings in accordance with instructions provided by the Board, including, but not limited to, the provisions of chapter 5 of this division.
- (c) Applications and Other Submissions. For applications described in section 5310, subdivision (b), both the petitioner and the Respondent must file their submissions with the other party and enclose a proof of filing with the other party in each submission to the Board Proceedings Division.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code section 15640; Revenue and Taxation Code sections 214, 254.6, 270, 1840. History: California Code of Regulations, title 18, sections 5052, 5063.

5335.4 Timely Performance; Mailing Date.

Timely performance and mailing date will be determined under the provisions of section 5571 of this division.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 1840. History: California Code of Regulations, title 18, sections 5052, 5062, 5074.5.

5335.6 Distribution of Documents.

The Board Proceedings Division will promptly distribute the petition, briefs, related documents, and the Hearing Summary or Summary Decision (and Revised Hearing Summary or Summary Decision, if prepared) to the petitioner, the Respondent, the Tax and Fee Programs Division, the Appeals Division, and the Board Members, as appropriate.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 1840. History: California Code of Regulations, title 18, sections 5063, 5075.

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Subchapter 6: Accepting, Rejecting, and Perfecting Petitions and Applications

5336 Accepting or Rejecting a Petition.

5336.5 Perfecting a Petition.

5336 Accepting or Rejecting a Petition.

- (a) Determination that the Petition is Valid, Complete, and Timely. Upon receipt of the petition, the Chief of Board Proceedings will determine whether the petition is valid and complete, including whether the petition is timely. If any question arises as to the timeliness of a petition or whether a petition is valid and complete, the Chief of Board Proceedings will refer the petition to the Chief Counsel.
- (b) Accepting the Petition. If the Chief of Board Proceedings, or the Chief Counsel, determines that the petition is valid and complete and that the petition is timely, or that there is a genuine, material issue relating to validity, completeness or timeliness, the Chief of Board Proceedings must accept the petition. The Chief of Board Proceedings will provide written acknowledgement of the acceptance to the petitioner and the Respondent. Upon acceptance of a valid and complete property tax sampling program petition, the Chief of Board Proceedings will also notify the owner of the sampled property of the filing of the petition by the county assessor.
- (c) Issues relating to Validity, Completeness, and Timeliness. If the Chief Counsel determines that there is a genuine, material issue relating to validity, completeness, or timeliness, such matters will be considered to be at issue in the petition and will be decided by the Board.
- (d) Rejecting the Petition. If the Chief of Board Proceedings and the Chief Counsel determine that the petition is not valid or complete or that the petition is not timely, and that there is no genuine, material issue relating to validity, completeness, or timeliness, the Chief of Board Proceedings must reject the petition. The Chief of Board Proceedings will provide written notification to the petitioner and the Respondent.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 1840.
History: California Code of Regulations, title 18, sections 5051, 5063.

5336.5 Perfecting a Petition.

- (a) Generally. The briefing and resolution of a petition cannot begin until the petition is perfected. For purposes of this part, a petition is “perfected” if it contains substantially all the information required by section 5332.4, 5333.4, or 5334.4, whichever is applicable. In addition, a petition is not “perfected” until it contains sufficient information to identify and contact each petitioner or authorized representative, along with the signature of each petitioner or authorized representative.

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(b) Time to Perfect the Petition. If the Chief of Board Proceedings receives an incomplete petition, the Chief of Board Proceedings will notify the petitioner in writing of the need to perfect the petition. The notification will be included in the acknowledgement letter issued under section 5336, subdivision (b). The notification will explain what information is necessary to perfect the petition.

(1) The petitioner must perfect the petition not later than 30 days from the date of the acknowledgement letter. The Chief of Board Proceedings may extend the deadline for perfecting the petition upon a showing of reasonable cause or upon written agreement by the parties. All parties must be notified in writing of any extension.

(2) Perfecting the petition is accomplished by submitting the information necessary to perfect the petition to the Chief of Board Proceedings.

(3) If the petitioner fails to perfect the petition within the 30-day period, or within any extension period granted by the Chief of Board Proceedings, the petition must be dismissed. All parties will be notified in writing of the dismissal.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 1840. History: California Code of Regulations, title 18, sections 5051, 5063.

Subchapter 7: Prehearing Meetings and Briefing Schedules

5337 Prehearing Meeting and Exchange of Information Between Respondent and Petitioner

5337.4 Briefing Schedules and Procedures: General Requirements

5337.6 General Briefing Schedule.

5337 Prehearing Meeting and Exchange of Information Between Respondent and Petitioner

(a) If requested by the petitioner with regard to a petition described in section 5310, subdivision (a)(3) or (a)(4), the Respondent and the Tax and Fee Programs Division will meet with the petitioner, either in person or by other means convenient to all parties, before the scheduled hearing date. The purpose of the meeting or meetings is to exchange relevant information and evidence, identify issues, and, if possible, enter into stipulations to resolve all or some of the issues.

(b) At any time, the Respondent or the Tax and Fee Programs Division may request additional information from the petitioner to assist in resolving any issue raised by the petitioner.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 1840. History: California Code of Regulations, title 18, section 5063.

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5337.4 Briefing: General Requirements

- (a) Submissions in the form of briefs are required for consideration of all petitions. The parties must adhere to the briefing schedules and other requirements set forth in this article.
- (b) Upon receipt of a perfected petition, the Chief of Board Proceedings will provide written notification to each party that a perfected petition has been filed and that briefing will begin under the applicable briefing schedule, as determined by the Chief of Board Proceedings. The notification may be included, if appropriate, in the acknowledgement letter issued under section 5336, subdivision (b). Throughout the briefing schedule, the Chief of Board Proceedings will inform the parties of applicable deadlines, extensions, and other requirements by written notification, and will ensure that all parties receive copies of any correspondence.
- (c) Any request to extend the period for filing a brief must be in writing. The Chief Counsel, in his or her discretion, may grant such a request upon a showing of reasonable cause or based upon the written agreement of the parties and the Appeals Division.
- (d) The party filing a brief is responsible for submitting one copy of the brief and any supporting exhibits to the Board Proceedings Division. Upon receipt of any brief filed within the scope of the applicable briefing schedule, including any applicable deadlines and extensions, the Chief of Board Proceedings will provide written acknowledgement of receipt to all parties and provide each opposing party with a copy of the brief and any supporting exhibits.
- (e) General Requirements. All briefs permitted to be filed under this section must follow the requirements listed below:
 - (1) Length.
 - (A) Not exceed 30 typed or handwritten, double-spaced 8 ½" by 11" pages, printed on one side only; or
 - (B) Not exceed 15 typed or handwritten, single-spaced 8 ½" by 11" pages, printed on one side only;
 - (2) Type-font size of at least 10 points or 12 characters per inch;
 - (3) The Table of Contents, Table of Authorities, and exhibits are not included in the page count;
 - (4) Exception. An exception to these requirements may be granted before the deadline for filing a brief. Exceptions may be requested by submitting a written request establishing reasonable circumstances that justify the necessity

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for additional pages to the Chief of Board Proceedings. It is at the discretion of the Chief Counsel or his or her designee to approve a request.

- (f) The failure to file a brief within the scope of the applicable briefing schedule, including any applicable deadlines, extensions, and other requirements, is a waiver of the right to file that brief. Such a failure will also conclude the briefing schedule, except as otherwise provided in the applicable briefing schedule.
- (g) Any individual or entity may file a non-party (amicus) brief regarding a petition or application described in section 5310, subdivision (a)(2), (a)(3), or (a)(4), subject to any generally applicable conditions of this section and the specific conditions of this subdivision.
 - (1) No individual or entity will be permitted to file more than one non-party brief. Briefs filed by unidentified individuals or entities will not be accepted.
 - (2) All non-party briefs must be filed before the conclusion of the applicable briefing schedule. However, the Board in its discretion may choose to accept for consideration a non-party brief filed after the conclusion of the applicable briefing schedule. For purposes of this paragraph, the conclusion of the applicable briefing schedule will be determined without regard to the filing of any non-party brief or reply thereto. There will not be any extensions of time for the filing of non-party briefs.
 - (3) If a non-party brief is filed, the Chief of Board Proceedings will acknowledge receipt of the brief and provide one copy to each party. Each party may file a reply to the non-party brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the non-party brief.
 - (4) The applicable briefing schedule is not concluded until the deadline for replying to all non-party briefs has passed.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 1840.
History: California Code of Regulations, title 18, sections 5053, 5063, 5075.

5337.6 General Briefing Schedule.

- (a) Application. The briefing schedule in this section applies to all petitions and applications described in section 5310, subdivision (a)(2), (a)(3), and (a)(4).
- (b) Opening Briefs.
 - (1) Petitioner's Opening Brief. The perfected petition is the Petitioner's Opening Brief.

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- (2) Respondent's Opening Brief. The Respondent must file an Opening Brief not later than 90 days from the date the Chief of Board Proceedings acknowledges receipt of the Petitioner's Opening Brief.

(c) Reply Briefs.

- (1) Petitioner's Reply Brief. The petitioner must file a Reply Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Respondent's Opening Brief. The Petitioner's Reply Brief, if filed, must address only points of disagreement with the Respondent's Opening Brief.

Except as provided in paragraph (2) of this subdivision, the filing of the Petitioner's Reply Brief concludes the briefing schedule.

- (2) Respondent's Reply Brief. The Respondent may file a Reply Brief only upon written permission from the Chief Counsel. The Respondent's Reply Brief, if filed, must address only points of disagreement with the Petitioner's Reply Brief.

(A) The Respondent will have 15 days from the date the Chief of Board Proceedings acknowledges receipt of the Petitioner's Reply Brief in which to file a written request for permission to file its Reply Brief.

(B) Upon receipt of the Respondent's written request, the Chief Counsel will determine whether additional briefing is necessary. Factors to be considered in determining whether additional briefing is necessary include, but are not limited to:

- (i) Whether the Petitioner's Reply Brief raised new facts, arguments, or evidence that are essential to the resolution of the petition;
- (ii) Whether the briefing filed to date has provided sufficient information for the Board to resolve the petition;
- (iii) Whether the facts and issues in the petition are so complex as to require additional discussion or clarification.

(C) If the Chief Counsel determines that additional briefing is necessary, he or she will grant the Respondent's request to file a Reply Brief. The Respondent may file its Reply Brief not later than 30 days from the date on which its request is granted.

(D) If the Chief Counsel determines that additional briefing is not necessary, he or she will deny the Respondent's request to file a Reply Brief and the briefing process is concluded.

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- (3) Petitioner's Supplemental Brief. If the Respondent files a Reply Brief, the petitioner may file a Supplemental Brief not later than 30 days from the date the Chief of Proceedings acknowledges receipt of the Respondent's Reply Brief. The petitioner's Supplemental Brief, if filed, shall address only points of disagreement with the Respondent's Reply Brief. The filing of the petitioner's Supplemental Brief concludes the briefing schedule.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 1840. History: California Code of Regulations, title 18, sections 5053, 5063, 5075.

Subchapter 8: Appeals Division Review, Prehearing Conferences, and Summaries

- 5338 Appeals Division Review.
5338.4 Appeals Conference.
5338.6 Preparing and Revising Hearing Summaries.

5338 Appeals Division Review.

- (a) At the conclusion of the general briefing schedule under section 5337.6, the Appeals Division will review the record and determine whether the briefing on file adequately addresses all relevant factual and legal issues. If the briefing on file does not adequately address all relevant factual and legal issues, the Appeals Division may request additional briefing under section 5523.4.
- (b) When the Appeals Division determines that all relevant factual and legal issues have been addressed and completes the appeals conference required by section 5338.4, the Appeals Division will notify the Chief of Board Proceedings that the petition is ready to be scheduled for an oral hearing.
- (c) Upon notification from the Appeals Division that the petition is ready to be scheduled for an oral hearing, the Chief of Board Proceedings will schedule and notice an oral hearing under section 5522.6.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 1840. History: California Code of Regulations, title 18, sections 5054, 5063, 5075.

5338.4 Appeals Conference.

- (a) Purpose. The purpose of an appeals conference is to obtain additional facts and evidence, obtain stipulations of fact, and narrow questions of law, in order to facilitate a more efficient and productive oral hearing or other Board action on the petition.
- (b) When to Hold an Appeals Conference. An appeals conference will be held for all petitions described in section 5310, subdivision (a)(2), (a)(3), and (a)(4). An appeals

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conference may be held only after the briefing schedule provided in section 5337.6 has concluded.

- (c) **Determining the Time and Location of the Appeals Conference.** The Appeals Division will determine the time and location of the appeals conference. Consistent with workload constraints, the Appeals Division will attempt to ensure that the appeals conference is held at a time convenient to the petitioner. The appeals conference will ordinarily be held at the Board's headquarters in Sacramento, and may be conducted in person, by videoconference, by teleconference, or by means of a secure electronic connection. However, an in-person appeals conference may be held outside of Sacramento if the Chief Counsel determines that there is reasonable cause and that the Board has the resources to conduct an appeals conference outside of Sacramento.
- (d) **Notice and Scheduling.** The Board Proceedings Division will schedule the appeals conference in accordance with information provided to it by the Appeals Division and will issue appropriate written notification to all parties.
- (e) **Conduct and Nature of the Appeals Conference.** A conference holder assigned to the Appeals Division will conduct the appeals conference. To the extent practicable, the conference holder will ensure that the appeals conference is informal and non-adversarial in nature.
- (f) **Recording.** The conference holder will not record, videotape, or arrange for court reporting of the appeals conference. Any party may arrange for the appeals conference to be recorded or reported, at that party's expense. If the appeals conference is recorded or reported, a copy of the transcript or recording must be promptly provided to all participants. A recording or transcript of an appeals conference becomes a disclosable public record, if and when the petition being discussed on the record or transcript becomes a disclosable public record under chapter 5 of this division.
- (g) **Additional Briefing and Evidence.** If at any time before the submittal of the Hearing Summary or Summary Decision under section 5338.6, the Assistant Chief Counsel for the Appeals Division, or his or her designee, determines that insufficient briefing or evidence has been provided, the Appeals Division may request additional briefing or evidence from any party. The Appeals Division may set forth the order, deadlines, and conditions for briefing that it deems appropriate. The Appeals Division will administer any request made under this subdivision and may extend deadlines under this subdivision upon a showing of reasonable cause.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 1840.

History: California Code of Regulations, title 18, sections 5054, 5063, 5075.

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5338.6 Preparing and Revising Hearing Summaries.

- (a) Preparing the Hearing Summary. The Appeals Division will prepare and submit a Hearing Summary to the Chief of Board Proceedings within 90 days after each appeals conference held under section 5338.4, or within any other period specified by the Chief of Board Proceedings, which provides the Appeals Division with at least 30 days to prepare and submit the Hearing Summary. The Chief Counsel may extend the time for submitting the Hearing Summary upon a showing of reasonable cause. Upon receipt of the Hearing Summary, the Chief of Board Proceedings will provide one copy to each party.
- (b) If the petition is submitted for decision without an oral hearing before the Appeals Division prepares a Hearing Summary, the Appeals Division will prepare a Summary Decision under section 5343.
- (c) If there has been a partial or complete resolution of issues between petitioner and the Respondent after the Appeals Division has issued its Hearing Summary or Summary Decision, the Appeals Division will draft a Revised Hearing Summary or Revised Summary Decision if time permits. The Revised Hearing Summary will state:
 - (1) The issues which have been resolved;
 - (2) The Appeals Division's revised recommendation; and
 - (3) The issues remaining for decision by the Board, if any.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 1840.

Article 4: General Board Hearing and Notice Procedures

- 5340 Relation to General Board Hearing Procedures.
- 5341 Additional Briefing.
- 5342 Notice of Hearing
- 5343 Submission for Decision Without Oral Hearing.
- 5344 Notice of Board Decisions.
- 5345 Finality of Board Action; Written Findings and Decision.

5340 Relation to General Board Hearing Procedures.

The procedures in chapter 5 of this division apply to the conduct of oral Board hearings on petitions described in section 5310. To the extent this chapter does not set forth a specific rule or procedure, the rules and procedures set forth in chapter 5 will apply to this article. Where there is a conflict between chapter 5 and this chapter, the provision of this chapter control.

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Note: Authority cited: Government Code sections 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 11251.

5341 Additional Briefing.

- (a) Staff Requests for Additional Briefing. If the Assistant Chief Counsel of the Appeals Division, or his or her designee, determines that insufficient briefing or evidence has been provided, the Appeals Division may request additional briefing or evidence from any party. The Appeals Division will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. Deadlines under this subdivision may be extended upon a showing of reasonable cause.
- (b) Individual Board Member's Request for Additional Briefing. Any individual Board Member may contact the Appeals Division in order to request additional briefing or evidence from any party. The Appeals Division will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. Deadlines under this subdivision may be extended upon a showing of reasonable cause.
- (c) Board Requests for Additional Briefing. If the Board determines that insufficient briefing or evidence has been provided, the Board may request additional briefing or evidence from any party. The Board will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. The Chief of Board Proceedings may extend deadlines set by the Board under this subdivision only upon a showing of extreme hardship and with the consent of the Board Chair.
- (d) Timing of Request. A request under this section may be made during or after the applicable briefing schedule has concluded. Additional briefs or evidence provided in response to such a request are not subject to the requirements of the applicable briefing schedule.
- (e) Notification of Board Chair. The Board Chair must be notified promptly of any request made under this section and may postpone the scheduling or hearing of an appeal.

Note: Authority cited: Government Code sections 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 11251.

5342 Notice of Hearing

- (a) Notice of Hearing. All parties to a petition or application will receive written notice of the date and time their petition is scheduled for oral hearing before the Board in accordance with chapter 5 of this division.

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- (b) Notice of Hearing on Applications. The notice of hearing for a hearing on an application described in section 5310, subdivision (a)(2), must contain a statement that, subject to the limitations of section 3, subdivision (b), and section 11 of article XIII, and of article XIII A of the California Constitution, the Board is required to determine the full cash value of the property that is the subject of the hearing and that this determination may exceed the value on which the assessment is based.

Note: Authority cited: Government Code sections 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 11251.

5343 Submission for Decision Without Oral Hearing.

- (a) A petition will be submitted for decision based upon the written records on file and without an oral hearing under any of the following circumstances:
 - (1) The petitioner does not request an oral hearing or waives a requested oral hearing under chapter 5 of this division.
 - (2) The petitioner fails to respond to a Hearing Notice as provided in section 5522.6.
- (b) Preparing the Summary Decision. Where a petition is submitted for decision without an oral hearing, the Appeals Division will prepare a Summary Decision summarizing the relevant facts and law and providing a recommendation for Board action.

Note: Authority cited: Government Code sections 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 11251.

5344 Notice of Board Decisions.

- (a) The petitioner and all other parties to a petition or application will be notified in writing of the Board's decision in accordance with chapter 5 of this division.
- (b) Decisions on Applications. When the review, equalization and adjustment of the taxable property of a county, city, city and county, or municipal corporation is completed, the Board will mail to the assessor, the county board of supervisors, the auditor of the taxing agency, and the taxpayer, a copy of the Board's findings and decision with respect to the assessment.
- (c) Decisions on Property Tax Welfare and Veterans' Organization Exemption Claims. Written notice of the Board's decision on a petition described in section 5310, subdivision (a)(3), will also be sent to the county assessor for the county in which the property is located.

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- (d) Decisions on Property Tax Sampling Program Petitions. The Notice of Board Action issued with regard to a petition described in section 35310, subdivision (a)(4), will be mailed to the county assessor and the property owner by the Board Proceedings Division.

Note: Authority cited: Government Code sections 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 1841, 11251.

5345 Finality of Board Action; Written Findings and Decision.

- (a) The following provisions apply to all petitions filed under this chapter:

- (1) The decision of the Board upon a property tax petition is final.
- (2) The Board may not reconsider or rehear a petition.
- (3) The Board may modify a decision on a petition to correct a clerical error.

- (b) If requested by the petitioner at any point before the commencement of the oral hearing or the commencement of the meeting at which the petition is scheduled for Board action, the Board will prepare and send to the petitioner a Written Findings and Decision according to the following procedure:

- (1) After the Board has decided the petition, the Appeals Division will draft the Written Findings and Decision.
- (2) The Chief of Board Proceedings will schedule the Written Findings and Decision for Board consideration.
- (3) Once the Board adopts the Written Findings and Decision, the Chief of Board Proceedings will promptly mail a copy of the Written Findings and Decision to petitioner.

The petitioner may waive its right to its requested Written Findings and Decision any time before Board approval of the petitioner's Written Findings and Decision.

Note: Authority cited: Government Code sections 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 1841, 11251.

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Board of Equalization Rules for Tax Appeals

California Code of Regulations
Title 18. Public Revenues
Division 2.1. State Board of Equalization – Rules for Tax Appeals

Note: The Board made “nonsubstantial or solely grammatical” changes to proposed sections 5510, subdivision (d), and 5573, subdivision (c)(1), which were authorized by Government Code section 11346.8, subdivision (c)(1) and noted using double strikeouts and double underlines in accordance with California Code of Regulations, title 18, section 46, subdivision (b)(3).

Chapter 5: General Board Hearing Procedures

Article 1: Application of Chapter and Definitions (§§ 5510-5512)
Article 2: Requirements for Scheduling Board Meetings and Hearings (§§ 5521-5523.8)
Article 3: Public Notification of Board Meeting (§ 5530)
Article 4: Conduct of the Board Meeting and Burden of Proof (§§ 5540, 5541)
Article 5: Voting and Decisions (§§ 5550, 5551)
Article 6: Post Hearing Notices and Petitions for Rehearing (§§ 5560-5563)
Article 7: Correspondence, Public Hearing Records, and Copies (§§ 5570-5576)

Article 1: Application of Chapter and Definitions

5510 General Application.
5511 Definitions.
5512 Construction.

5510 General Application of Chapter 5.

(a) This chapter applies to Board hearings under any of the following laws:

- (1) Administration of Franchise and Income Tax Laws
Revenue and Taxation Code sections 18401-19802
- (2) Alcoholic Beverage Tax Law
California Constitution, article XX, section 22;
Revenue and Taxation Code sections 32001-32557
- (3) California Tire Fee
Public Resources Code sections 42860-42895;
Revenue and Taxation Code sections 55001-55381
- (4) Childhood Lead Poisoning Prevention Fee
Health and Safety Code sections 105275-105310;
Revenue and Taxation Code sections 43001-43651
- (5) Cigarette and Tobacco Products Tax Law
California Constitution, article XIII B, section 12;
Health and Safety Code sections 104555-104558;
Revenue and Taxation Code sections 30001-30482

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- (6) Diesel Fuel Tax Law
Revenue and Taxation Code sections 9401-9433 and 60001-60708
- (7) Emergency Telephone Users Surcharge Law
Revenue and Taxation Code sections 41001-41176
- (8) Energy Resources Surcharge Law
Revenue and Taxation Code sections 40001-40216
- (9) Hazardous Substances Tax Law
Revenue and Taxation Code sections 43001-43651
- (10) Integrated Waste Management Fee Law
Public Resources Code sections 40000-40201, 44001-44006, and 48000-48008;
Revenue and Taxation Code sections 45001-45984
- (11) Marine Invasive Species Fee Collection Law
Public Resources Code sections 71200-71271;
Revenue and Taxation Code sections 44000-44008, 55001-55381
- (12) Motor Vehicle Fuel Tax Law
California Constitution, article XIX, sections 1-9;
Revenue and Taxation Code sections 7301-8526
- (13) Natural Gas Surcharge Law
Public Utilities Code sections 890-900;
Revenue and Taxation Code sections 55001-55381
- (14) Occupational Lead Poisoning Prevention Fee
Health and Safety Code sections 105175-105197;
Revenue and Taxation Code sections 43001-43651
- (15) Oil Spill Response, Prevention, and Administration Fees Law
Government Code sections 8670.1-8670.51.1
Revenue and Taxation Code sections 46001-46751
- (16) Private Railroad Car Tax
California Constitution, article XIII, section 19;
Revenue and Taxation Code sections 11201-11702
- (17) Publicly Owned Property
California Constitution, article XIII, section 11(g);
Revenue and Taxation Code sections 1840 and 1841
- (18) Sales and Use Tax Law, Bradley-Burns Uniform Sales and Use Tax Law,
and Transactions and Use Tax Law
Revenue and Taxation Code sections 6001-7176, 7200-7226, and 7251-7279.6, respectively

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- (19) Senior Citizens Homeowners and Renters Property Tax Assistance Law
Revenue and Taxation Code sections 20501-20646
 - (20) State-Assessed Property
California Constitution, article XIII, section 19;
Revenue and Taxation Code sections 721-868, 4876-4880, 5011-5014
 - (21) Tax on Insurers Law
California Constitution, article XIII, section 28;
Revenue and Taxation Code sections 12001-13170
 - (22) Timber Yield Tax
Revenue and Taxation Code sections 423.5, 431-437, 38101-38908
 - (23) Underground Storage Tank Maintenance Fee
Health and Safety Code sections 25280-25299.99.3
Revenue and Taxation Code sections 50101-50162
 - (24) Use Fuel Tax
Revenue and Taxation Code sections 8601-9433
 - (25) Welfare Exemption
California Constitution, article XIII, section 4(b);
Revenue and Taxation Code sections 214-214.15, 254.5-254.6, 270-272
- (b) This chapter sets forth rules of general application for all Board hearings conducted under the laws listed in subdivision (a) of this section. Where the procedure for a specific law differs from the general rule, the more specific procedure will be provided or cross-referenced.
- (c) The rules and procedures in chapter 4 (commencing with section 5410) apply to appeals from the actions of the Franchise Tax Board. To the extent that provisions in this chapter conflict with chapter 4, the provisions of chapter 4 control.
- (d) To the extent that provisions in this chapter conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement control.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. History: California Code of Regulations, title 18, section 5071.

5511 Definitions.

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The following definitions apply to this chapter, and also apply to chapters 2, 3, and 4 of this division as provided therein:

- (a) "Appeals Division" means the Appeals Division of the Board of Equalization's Legal Department. "Appeals Staff" means an employee or employees of the State Board of Equalization assigned to the Appeals Division of the Legal Department.
- (b) "Board" means the Board Members of the State Board of Equalization meeting or acting as a body, or the agency created by article XIII, section 9, of the California Constitution, as the context indicates.
- (c) "Board Chair" or "Chair" means the Chairperson of the State Board of Equalization, whom the Board may choose from time to time.
- (d) "Board Member" means an individual Member of the State Board of Equalization. "Board Member" includes a deputy appointed by the Controller pursuant to Government Code section 7.6 or 7.9 (as interpreted by the Attorney General), when the deputy is performing the Controller's statutory duties on the Board.
- (e) "Board Proceedings Division" means the Board Proceedings Division of the State Board of Equalization. "Board Proceedings Staff" means an employee or employees of the Board Proceedings Division.
- (f) "Board Staff" means an employee or employees of the State Board of Equalization. "Board Member's Staff" refers to Board Staff assigned to the office of a Board Member.
- (g) "Brief" means a written document that contains an argument supporting a party's position, including arguments on how laws or regulations apply to the facts presented in a party's matter. Notwithstanding this definition, affidavits and declarations submitted by parties, and documents produced by the Appeals Division, including, but not limited to, hearing summaries and final action recommendations, are not briefs.
- (h) "Chief Counsel" means the Chief Counsel of the State Board of Equalization and any person to whom the Chief Counsel may delegate his or her official duties from time to time.
- (i) "Claimant" means a taxpayer whose matter involves the denial of a claim under any of the laws listed in section 5510. The term "claimant" includes a taxpayer's authorized representative, where appropriate.
- (j) "Chief of Board Proceedings" means the Chief of the Board Proceedings Division and any person to whom the Chief of Board Proceedings may delegate his or her official duties from time to time. The Chief of Board Proceedings acts as the Clerk of the Board and establishes policy for the management of the matters to be heard by the Board, including but not limited to scheduling, issuance of notices, preparation of minutes, and the review and monitoring of documents.

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- (k) “Delivery Service” means a trade or business, if such trade or business delivers documents in the ordinary course of its business, makes its delivery services available to the general public, and records electronically to its data base, kept in the regular course of its business, or marks on the cover in which any item is delivered, the date on which such item was received by the trade or business for delivery.
- (l) “Department” means the Property and Special Taxes Department of the Board of Equalization, Sales and Use Tax Department of the Board of Equalization, Energy Commission, Department of Fish and Game, Franchise Tax Board, Department of Health Services, Department of Insurance, Integrated Waste Management Board, Public Utilities Commission, Department of Toxic Substances Control and Water Resources Control Board, where appropriate.
- (m) “Deputy Director” means the Deputy Director of the State Board of Equalization’s Sales and Use Tax Department or Property and Special Taxes Department and any person to whom the Deputy Director delegates his or her official duties from time to time.
- (n) “Executive Director” means the Executive Director of the State Board of Equalization and any person to whom the Executive Director may delegate his or her official duties from time to time.
- (o) “Extreme hardship” means that a person exercising ordinary care is unable to or restricted from complying with a provision of this division due to extraordinary circumstances beyond the person’s control.
- (p) “Hearing” means a taxpayer’s opportunity to appear before the Board during a Board meeting and present oral arguments regarding issues of fact and law relevant to the taxpayer’s matter.
- (q) “Hearing Summary” is an objective, written document intended to assist the Board in its consideration of and decision on a matter for which an oral hearing has been requested.
- (r) “Matter” means:
 - (1) Any petition, including, but not limited to, a petition for redetermination, petition for reassessment, petition for reconsideration of successor liability, petition for review of local tax reallocation inquiries, or petition for review of district tax redistribution inquiries;
 - (2) Claim, including a claim for refund;
 - (3) Appeal from an action of the Franchise Tax Board and related proceedings provided under chapter 4;
 - (4) Application for administrative hearing;
 - (5) Petition for rehearing; and

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- (6) Any other item scheduled for a Board hearing in any program listed in section 5510, including, but not limited to, requests for relief of taxes, interest, or penalties.
- (s) “Party” means the taxpayer and the Department as defined in this section.
- (1) In any matter where an agency has requested an oral hearing in accordance with chapter 2 and the taxpayer has not requested an oral hearing, the agency requesting the oral hearing shall be the Department for purposes of this chapter, and neither the Property and Special Taxes Department nor the Appeals Division shall be the Department.
- (2) For purposes of claims or inquiries regarding the incorrect or non-distribution of local or district taxes, the term “party” means those persons defined as parties in California Code of Regulations, title 18, section 1807 or 1828.
- (t) “Person” shall have the same definition as that used in Revenue and Taxation Code section 19.
- (u) “Reasonable cause” means such circumstances as would prevent an ordinarily prudent and competent person exercising ordinary care and diligence from complying with a provision of this division.
- (v) “Tax” means any tax, fee, surcharge, assessment, appraisal review, or exemption program administered by the Board or another agency and which is the subject of a matter before the Board.
- (w) “Taxpayer” means an individual or business entity that is a taxpayer, feepayer, surcharge payer, appellant, petitioner, claimant, or any other person who has a liability, assessment, or other matter for Board hearing such as an appeal from the actions of the Franchise Tax Board, or who is a person directly interested in any matter before the Board under any of the programs listed in section 5510. A taxpayer is not a party to a claim or inquiry regarding the incorrect or non-distribution of local or district taxes except as provided in California Code of Regulations, title 18, section 1807 or 1828. The term “taxpayer” also includes, where appropriate, the taxpayer’s authorized representative.
- (x) “Section” means a section of title 18 of the California Code of Regulations, unless otherwise specified.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. References: California Constitution, article XIII, section 17; Government Code sections 15606, 15640; Revenue and Taxation Code sections 20, 254.5, 254.6, 742, 748, 1840, 5107, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429,

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12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, section 5070.

5512 Construction.

The following provisions of this division must be construed and applied in accordance with the following terminology:

- (a) “Must” is mandatory.
- (b) “May” is permissive.
- (c) “May not” means not permitted to.
- (d) “Will” expresses a future contingency or predicts an action in the ordinary course of events, but does not signify a mandatory duty.
- (e) “Should” expresses a preference or a nonbinding recommendation.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881.

Article 2: Requirements for Scheduling Board Meetings and Hearings

Subchapter 1. Meeting Calendars

- 5521 Monthly Board Meetings.
- 5521.5 Adoption of Board Meeting Calendar.

Subchapter 2. Requesting and Scheduling an Oral Hearing

- 5522 Right to Request an Oral Hearing.
- 5522.2 Acknowledgement of Request for Oral Hearing.
- 5522.4 Consolidation for Hearing or Decision.
- 5522.6 Notice of Board Hearing and Response.

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5522.8 Dismissal, Deferral, and Postponement.

Subchapter 3. Representation, Prehearing Documents, and Preparation for Hearing

5523 Representation at Hearings.

5523.1 Power of Attorney.

5523.2 Contribution Disclosure Forms.

5523.3 Hearing Summary.

5523.4 Additional Briefing.

5523.5 Preparation for Board Hearing and Subpoenas.

5523.6 Presentation of Evidence or Exhibits.

5523.7 Witnesses.

5523.8 Communications with Board Members.

Subchapter 1. Meeting Calendars

5521 Monthly Board Meetings.

5521.5 Adoption of Board Meeting Calendar.

5521 Monthly Board Meetings.

- (a) Monthly Meetings. The Board holds monthly Board meetings. Board meetings are conducted in Sacramento and at other locations within the state for the convenience of taxpayers and their representatives residing outside the Sacramento area.
- (b) Additional Meetings. At the discretion of the Board Chair, additional meetings may be conducted at such times and places as needed within the state.
- (c) Teleconference Board Meetings. When circumstances require, the Board may hold meetings via teleconference as provided in Government Code section 11123.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code section 15609, 15610.

5521.5 Adoption of Board Meeting Calendar.

- (a) The Board generally adopts a meeting calendar for the following calendar year, but may adopt a meeting calendar for any appropriate period.
- (b) Within 15 days of adoption, the meeting calendar will be available for viewing by the public on the Board's website at www.boe.ca.gov.
- (c) The Chief of Board Proceedings may cancel a portion of a Board meeting listed on a previously adopted meeting calendar after giving notice to the Board Chair. A majority vote of the Board may cancel or change a meeting date or location identified on a previously adopted meeting calendar. Board Proceedings Staff must promptly amend the publicly available meeting calendar to reflect any changes made pursuant to this subdivision.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170,

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30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code section 15609, 15610.

Subchapter 2. Requesting and Scheduling an Oral Hearing

- 5522 Right to Request an Oral Hearing.
- 5522.2 Acknowledgement of Request for Oral Hearing.
- 5522.4 Consolidation for Hearing or Decision.
- 5522.6 Notice of Board Hearing and Response.
- 5522.8 Dismissal, Deferral, and Postponement.

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5522 Right to Request an Oral Hearing.

- (a) Every taxpayer may file a written request for an oral hearing before the Board regarding any matter subject to the provisions of this chapter.
- (b) Written requests for an oral hearing must be granted where the Board is required to grant an oral hearing on the taxpayer's matter by a statute or regulation, and will be liberally granted with regard to discretionary matters, unless an oral hearing is being requested for the primary purpose of delay or the taxpayer's position is frivolous or groundless.
- (c) Business and Special Taxes: A written request for an oral hearing must be filed no later than 30 days after the date the Appeals Division issues its Decision and Recommendation pursuant to chapter 2 of this division.
- (d) Property Taxes: A written request for an oral hearing must be included in the taxpayer's petition or application pursuant to chapter 3 of this division.
- (e) Appeals from Actions of the Franchise Tax Board: A written request for an oral hearing before the Board must be filed in accordance with section 5440 of chapter 4 of this division.
- (f) The Board may hold an oral hearing to discuss any matter whether or not an oral hearing has been timely requested in accordance with subdivisions (c), (d), and (e).

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Revenue and Taxation Code; Public Resources Code sections 42475, 42881. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1, 1807, 1828.

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5522.2 Acknowledgement of Request for Oral Hearing.

- (a) If Board Staff receives a written request for an oral hearing or confirmation that a previously requested hearing is still desired, the Board Proceedings Division must issue a letter acknowledging the request. The acknowledgment letter will indicate whether an oral hearing before the Board has been granted, and, if granted, will also provide the location where the oral hearing will be scheduled.
- (b) Taxpayers must submit requests to change the location where an oral hearing is scheduled to the Board Proceedings Division upon receipt of the acknowledgement letter. Upon receipt of a request to change location, the Chief of Board Proceedings will review the request, prepare a recommendation, and submit the request and recommendation to the Board Chair for decision.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1.

5522.4 Consolidation for Hearing or Decision.

- (a) Multiple matters may be consolidated for hearing or decision if the facts and issues are similar and no substantial right of any party will be prejudiced.
- (b) The Board Members, Appeals Staff, or any party may request a consolidation, or object to a consolidation of, matters for hearing or decision.
- (c) Requests for and objections to the consolidation of matters for hearing or decision must be submitted in writing to the Board Proceedings Division and to all parties to the matters at issue.

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- (1) A request for consolidation should establish that the relevant facts and issues in each matter to be heard or decided are similar, and that no substantial right of any party would be prejudiced by consolidation.
- (2) An objection to the consolidation of matters to be heard or decided should establish that consolidation would have an adverse affect on a substantial right of the objecting party.
- (d) If the Chief Counsel determines that consolidation would not prejudice a substantial right of any party, or all of the parties to such matters agree to consolidation, the Chief of Board Proceedings will consolidate such matters and notify all of the parties. If the Chief Counsel determines that consolidation would have an adverse effect on a substantial right of any party, the matters may not be consolidated regardless of the parties' consent.
- (e) Any party may file an objection to consolidation not later than 15 days from the date the Chief of Board Proceedings issues the notice described in subdivision (d). Upon receipt of an objection, the matters must be deconsolidated unless the Chief Counsel determines that the objection is frivolous or deconsolidation would result in the misuse of administrative resources.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, section 5074.

5522.6 Notice of Board Hearing and Response.

(a) General Procedure.

- (1) Except as provided in paragraph (2) of this subdivision, Board Proceedings Staff must mail a Notice of Board Hearing along with a Response to Notice of

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Board Hearing to each party and each party's authorized representative at least 75 days in advance of the parties' scheduled hearing date.

- (2) With regard to State Assessee and Private Railroad Car Matters, Board Proceedings Staff must mail a Notice of Board Hearing along with a Response to Notice of Board Hearing to each party and each party's authorized representative at least 45 days in advance of the parties' scheduled hearing date.

(b) Notice of Board Hearing. The notice must contain the following information:

- (1) The name, address, and case identification number of the taxpayer;
- (2) The session, date, and location of the hearing;
- (3) The due date of the Response to Notice of Board Hearing;
- (4) The Board Proceedings Division's contact name, email address, mailing address, telephone number, and fax number; and
- (5) The date the Notice of Board Hearing was mailed.

(c) Response to Notice of Board Hearing. Each party or each party's authorized representative must return the Response to Notice of Board Hearing no later than 15 days from the date the Notice of Board Hearing was mailed. Each party or party's authorized representative must respond to the Notice of Board Hearing by indicating that:

- (1) The party or party's authorized representatives will appear at the hearing at the time and place noted;
- (2) The party waives the opportunity to appear and be represented at the hearing and requests the Board to decide the matter on the basis of the written record on file and without an oral hearing; or
- (3) The party withdraws the party's request for a hearing.

A party or party's representative may also include a request for an interpreter in the Response to Notice of Board Hearing. Persons participating in Board meetings who speak a language other than English and require an interpreter are entitled to an interpreter at no charge.

(d) Waiver of Notice. The 75-day and 45-day notice periods may be waived upon agreement among all parties and the Chief Counsel. If the 75-day or 45-day notice period is waived, the Chief of Board Proceedings will modify any briefing schedule as appropriate.

(e) Failure to Respond to Notice of Board Hearing.

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- (1) If the party or parties who requested an oral hearing all fail to return the Response to Notice of Board Hearing by the deadline stated in the Notice of Board Hearing, the matter will be submitted to the Board for decision on the basis of the written record on file without an oral hearing.
- (2) Board Proceedings Staff will notify the taxpayer, and any state agency that is a party to a matter in writing that the matter has been removed from the oral hearing calendar and placed on a consent calendar for Board decision.
- (3) Prior to a Board decision, the Chief Counsel, in his or her discretion, may make exceptions to return the matter to the oral hearing calendar upon a showing of reasonable cause.
- (4) If the Chief Counsel makes an exception, the Board Proceedings Division must promptly provide notice to all the parties to such matter.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, section 5076.

5522.8 Dismissal, Deferral, and Postponement.

- (a) Dismissal. The Chief of Board Proceedings will dismiss a matter under any of the following circumstances:
 - (1) The taxpayer or the taxpayer's authorized representative submits a written, signed request for dismissal;
 - (2) The Department submits a written concession of the entire amount of the deficiency, refund, or claim at issue; or

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- (3) The parties submit a written stipulation, signed by all the parties, in which all parties agree to dismissal.
- (b) Deferral or Postponement of Hearing or Briefing. A Board Member, Appeals Staff, or any party to a matter may request that a hearing or the due date of any brief be deferred or postponed for reasonable cause. Requests for deferral or postponement must be submitted to the Chief of Board Proceedings.
 - (1) Deferral or Postponement for Short Periods of Time. The Chief of Board Proceedings may grant a deferral or postponement for a period of 90 days or less in his or her sole discretion, or for a period of more than 90 days with the consent of the Chief Counsel in any of the following circumstances:
 - (A) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to the illness of that person or a member of that person's immediate family;
 - (B) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to an unavoidable scheduling conflict;
 - (C) A party has obtained a new representative who requires additional time to become familiar with the case;
 - (D) The Chief of Board Proceedings has been informed that all parties desire a deferral or postponement;
 - (E) The Chief of Board Proceedings has been informed by the Franchise Tax Board that the matter is being reviewed for possible settlement consideration; or
 - (F) Any other facts or circumstances determined by the Chief of Board Proceedings and the Chief Counsel to constitute reasonable cause.
 - (2) Deferral or Postponement for Formal Settlement Negotiations. The Chief of Board Proceedings may, in his or her discretion, grant a deferral or postponement for an initial period of up to nine months, and thereafter, for additional periods of time in 160 day increments, if the parties to the matter have entered into formal settlement negotiations.
 - (3) Deferral or Postponement for Other Actions. The Chief Counsel may, in his or her discretion, grant a deferral or postponement for a determined period of time due to the following circumstances:
 - (A) The Chief Counsel determines that related civil or criminal litigation is pending in state or federal court, the outcome of which is likely to have a bearing on the matter being deferred or postponed.
 - (B) The Chief Counsel determines that unrelated civil or criminal litigation pending in federal or state court contains similar issues to

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those claimed by parties to a matter and that the outcome of the unrelated litigation is likely to have a bearing on the matter being deferred or postponed.

- (4) Deferral or Postponement for Bankruptcy Action. The Chief of Board Proceedings shall postpone a matter that is subject to chapter 4 of this division upon receiving notice that the taxpayer is a debtor in a bankruptcy proceeding. The Chief of Board Proceedings shall notify the Board and the parties that the matter is postponed until the taxpayer's bankruptcy is concluded.
- (5) The Chief Counsel may, with the consent of the Board Chair, grant a deferral or postponement for any reason.
- (c) Additional Deferrals or Postponements. After the initial deferral or postponement period, the Chief Counsel may grant additional deferrals and postponements that are not described in subdivisions (a) and (b) of this section upon a showing of extreme hardship and only with the consent of the Board Chair.
- (d) The Chief of Board Proceedings must provide written notification to the parties if a deferral or postponement has been granted.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, section 5076.

Subchapter 3. Representation, Prehearing Documents, and Preparation for Hearing

- 5523 Representation at Hearings.
- 5523.1 Power of Attorney.
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5523 Representation at Hearings.

- (a) Representation. During the hearing, taxpayers may be represented by any authorized person or persons, at least eighteen years of age, of the taxpayer's choosing, including, but not limited to, an attorney, appraiser, accountant, bookkeeper, employee or business associate. For purposes of this section, a person whose only function is to interpret for the taxpayer is not a representative.
- (b) Recognition. The Board will recognize all authorized representatives who are identified in writing or orally by the taxpayer. Authorized representatives shall be permitted to receive confidential information relating to the taxpayer they represent, and to perform on behalf of the taxpayer all acts that the taxpayer may perform in preparation for and during the hearing.
- (c) Substitution or Withdrawal. Taxpayers must promptly notify the Chief of Board Proceedings in writing of any substitutions or withdrawals of representation and must also notify the Franchise Tax Board in all matters that are subject to chapter 4 of this division.
- (d) Suspended or Disbarred Representatives. A person suspended or disbarred from practice before the Franchise Tax Board pursuant to Revenue and Taxation Code section 19523.5 may not represent any taxpayer in a matter that is subject to chapter 4 of this division after the Franchise Tax Board gives the Chief of Board Proceedings notice of the suspension or disbarment.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, section 5073.

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5523.1 Power of Attorney.

- (a) Requirement. The Board or Board Staff may require a taxpayer to complete a Board approved Power of Attorney in order to authorize another person or persons to act on the taxpayer's behalf. The Power of Attorney must be a standard form adopted in conjunction with the Franchise Tax Board to be used in either State Board of Equalization or Franchise Tax Board matters.
- (b) Form. The Power of Attorney must shall include the following information:
 - (1) Taxpayer's name, telephone number, taxpayer identification number(s), account or permit number(s) and mailing address;
 - (2) The name, address (including e-mail, if any), and telephone and FAX number of the appointed representative(s);
 - (3) The tax matters in which the representative is authorized to represent the taxpayer; the scope of the representative's authority; and the tax period(s) for which the authorization is granted;
 - (4) A statement that the Power of Attorney revokes all prior Powers of Attorney, with any exceptions to the revocation;
 - (5) The time period during which the Power of Attorney shall be in effect; and
 - (6) The signature(s) and title of all affected taxpayers and the date of signature.
- (c) In lieu of the standard form described in subdivision (a), Board Staff will accept any written document containing substantially all of the provisions required by subdivision (b), including but not limited to a statutory form power of attorney complying with the provisions of Probate Code section 4401.
- (d) If an issue arises as to a representative's authorization under any power of attorney, Board Staff will forward the document to the Chief Counsel, who will determine its legal effect.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5,

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41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, section 5073.

5523.2 Contribution Disclosure Forms.

- (a) The Board is subject to the Quentin L. Kopp Conflict of Interest Act of 1990 (Gov. Code, § 15626) as interpreted by California Code of Regulations, title 18, sections 7001 through 7011, which requires Board Members to disclose certain political contributions and disqualifies Board Members from participating in certain adjudicatory proceedings (as defined in Gov. Code, § 15626, subd. (h)(5)). In order to comply with the provisions of the Quentin L. Kopp Conflict of Interest Act of 1990:
 - (1) Every Board Member must make the disclosures required by California Code of Regulations, title 18, section 7009; and
 - (2) Every party, participant and agent as defined in California Code of Regulations, title 18, sections 7004 through 7006 must complete a contribution disclosure form as required by California Code of Regulations, title 18, section 7011.
- (b) Approximately 45 days prior to a hearing, Board Proceedings Staff will mail contribution disclosure forms to all parties, participants, and agents as defined in California Code of Regulations, title 18, sections 7004 through 7006, inquiring as to whether contributions have been made to one or more Board Members.
- (c) Contribution disclosure forms should be returned to the Board Proceedings Division prior to the recipient's scheduled hearing.
- (d) The rules and definitions contained in Government Code section 15626 and California Code of Regulations, title 18, sections 7001 through 7011 apply to this section.

Note: Authority: Government Code section 15606. Reference: Government Code section 15606, 15626. History: California Code of Regulations, title 18, section 7011.

5523.3 Hearing Summary.

- (a) Preparation. The Appeals Division should prepare and submit an objective Hearing Summary to the Chief of Board Proceedings:
 - (1) Generally within 40 days of the oral hearing date, with respect to matters arising under chapter 2 of this division;

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- (2) As provided in chapter 3 of this division, with respect to matters arising under chapter 3; or
- (3) As provided in section 5444, with respect to matters arising under chapter 4 of this division.

If the Appeals Division determines that a Hearing Summary requires modification after initial distribution, the Appeals Division will promptly provide the modifications to the Chief of Board Proceedings.

- (b) **Date of Mailing.** The Board Proceedings Division must mail, transmit via electronic means (e.g., facsimile, e-mail, etc.), or otherwise provide the taxpayer and the Department with a copy of the Hearing Summary, generally within 30 days of the oral hearing date. Modifications to a Hearing Summary after initial distribution must be mailed, transmitted via electronic means (e.g., facsimile, e-mail, etc.), or otherwise provided to the taxpayer and the Department promptly after the modified Hearing Summary is provided to the Chief of Board Proceedings in a manner intended to provide prompt notice.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1.

5523.4 Additional Briefing.

- (a) **Additional Briefing.** If the Board, a Board Member, or the Assistant Chief Counsel for the Appeals Division or his or her designee determines that insufficient briefing has been provided under chapter 2 of this division after issuance of the Hearing Summary, but prior to an oral hearing before the Board, a Board Member or the Assistant Chief Counsel for the Appeals Division or his or her designee may request additional briefing from either party in a writing addressed to the Chief of Board Proceedings.

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- (b) Briefing Schedule. Upon receipt of a request for additional briefing described in subdivision (a), the Chief of Board Proceedings will set a briefing schedule and notify the parties that additional briefing is required.
- (c) General Requirements. All briefs permitted to be filed pursuant to this section must follow the requirements listed below:
 - (1) Be addressed and mailed to the Chief of Board Proceedings;
 - (2) Be mailed or personally delivered to the other parties;
 - (3) Length.
 - (A) Not exceed 30 typed or handwritten, double-spaced 8 ½" by 11" pages, printed on one side only; or
 - (B) Not exceed 15 typed or handwritten, single-spaced 8 ½" by 11" pages, printed on one side only;
 - (C) Type-font size of at least 10 points or 12 characters per inch;
 - (D) The Table of Contents, Table of Authorities, and exhibits are not included in the page count;
 - (4) Exception. An exception to the requirements of paragraph (3) may be granted prior to the deadline for filing a brief. Exceptions may be requested by submitting a written request establishing reasonable circumstances that justify the necessity for additional pages to the Chief of Board Proceedings. It is at the discretion of the Chief Counsel or his or her designee to approve a request.
- (e) Appeals from the Actions of the Franchise Tax Board: This section does not apply to additional briefing in matters that are subject to the provisions of chapter 4 of this division. Section 5435 of chapter 4 of this division applies to such additional briefing.
- (f) Property Tax Matters. This section applies to additional briefing in matters that are subject to chapter 3, article 3 of this division, and does not apply to matters subject to chapter 3, article 2 of this division.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178,

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30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, section 5075.

5523.5 Preparation for Board Hearing and Subpoenas.

- (a) **Scope of Hearing.** An oral hearing will be limited to consideration of the facts, issues, values, or precise elements in dispute in a taxpayer's matter. The Board may ask the parties questions during an oral hearing, and will afford the parties an opportunity to respond.
- (b) **Subpoenas.** The Board may issues subpoenas for the attendance of witnesses or the production of books, records, accounts and papers before the Board, the Board's Executive Director, individual Board Members, or any other representative of the Board in accordance with Government Code section 15613. An application for a subpoena for the production of books, records, accounts and papers must be supported by an affidavit showing good cause and containing the information prescribed by Code of Civil Procedure section 1985. Any affidavit filed in support of an application for a subpoena must be served with the subpoena. A subpoena must be signed by a Board Member, the Board's Executive Director, or other person designated by the Executive Director. Taxpayers are required to serve subpoenas issued pursuant to their request upon the witnesses identified in the subpoenas and will bear any expenses incurred.
- (c) **Time Allocation.** The Chief of Board Proceedings will generally allocate a total of 35 minutes per hearing. The Chief of Board Proceedings will inform the parties and the Board of the time allocations prior to the hearing.
- (d) **Additional Time.** A party may request additional time to present a complex matter. A request for additional time must be submitted to the Board Proceedings Division in writing no less than 15 days prior to the hearing, and state the reason(s) why additional time is needed. The Chief of Board Proceedings must submit requests for additional time to the Board Chair for approval. The Board Chair may grant a party whatever additional time the Board Chair determines the party needs to present a complex matter. Board Proceedings Staff will inform all the parties and the Board in writing as to whether a request for additional time has been granted or denied.
- (e) **Modification.** At the oral hearing, the Board Chair may limit the time for a party's presentation if, in his or her discretion, the Board Chair determines that the party's presentation has no purpose other than to delay the proceedings. The Board Chair

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may, in his or her discretion, grant a party additional time to complete its presentation during the hearing.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code sections 15606, 15613, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7081, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, sections 5077, 5078.

5523.6 Presentation of Evidence or Exhibits.

- (a) Admissible Evidence. Any relevant evidence, including affidavits, declarations under penalty of perjury, and hearsay evidence, may be presented to the Board at a hearing. Each party will be permitted to comment on or respond to any affidavits, declarations, or any other evidence submitted.
- (b) Submission of Evidence. Parties should submit documentary evidence to the Board Proceedings Division and to the opposing party at least 14 days prior to the hearing in order to facilitate the orderly consideration of the issues at the hearing. Although the Board may permit a party to submit documentary evidence at the hearing, the Board is not required to delay or postpone the hearing in order to consider evidence submitted at the hearing. The Board will consider any objections to, and comments on, the evidence presented at the oral hearing in assigning weight to such evidence. The Board may refuse to allow the presentation of evidence that it considers irrelevant, untrustworthy, or unduly repetitious.
- (c) Stipulation of Facts. The taxpayer and the Department may file, at any time prior to submission of the matter for decision, a stipulation of the facts upon which they agree, the facts which are in dispute, and the reasons for the dispute. The Board or the Chief Counsel may require the parties to file such a stipulation where appropriate.
- (d) Official Notice. The Board may on its own or at the request of a party take official notice of any fact that may be judicially noticed by the courts of this State. Any party may, at the hearing or in its petition for rehearing, refute any matter thus noticed.

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- (e) Distribution. Board Proceedings Staff must provide copies of any documentary evidence that has been submitted or officially noticed, any written arguments concerning the relevance of the evidence, and any stipulations to the Board Members, each party, and the Appeals Division.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7081, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, section 5079.

5523.7 Witnesses.

- (a) Witnesses. The taxpayer and the Department may offer the testimony of any person who can provide relevant information concerning the matter, including representatives of the taxpayer and the Department who have knowledge concerning the facts at issue in the matter.
- (b) If a witness refuses to testify or produce books, records, accounts, or papers pursuant to a Board issued subpoena, the Board may initiate contempt proceedings as provided in Government Code section 15614 to compel compliance. A person found guilty of contempt may be punished by a fine and imprisonment in the county jail.
- (c) As part of the Response to Notice of Board Hearing, the parties should provide the Board Proceedings Division and the opposing party with the name and address of any witness who will testify, and a brief description of the purpose of their testimony, in advance of the hearing.
- (d) The Board Chair may, at the Board Chair's discretion, direct any witness to testify under oath or affirmation, and any Board Member or party to a matter may request that any witness testify under oath or affirmation.

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- (e) Each party may cross-examine opposing witnesses. However, the Board will not compel witnesses to answer questions in any particular manner.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7081, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, section 5079.

5523.8 Communications with Board Members.

The Board Members shall remain accessible to their constituents, their subordinates, other governmental agencies, and taxpayers at all times in order to execute their constitutional and statutory duties. Therefore, such persons and their authorized representatives, including members of the State Bar, may contact Board Members and a Board Member's Staff at any time, including while a matter involving such persons is awaiting an oral hearing before the Board.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code sections 15609.5, 15610, 15623; Revenue and Taxation Code section 7081.

Article 3: Public Notification of Board Meeting

5530 Public Agenda Notice.

5530 Public Agenda Notice.

- (a) Board Proceedings Staff must mail a Public Agenda Notice showing the matters and other items of business scheduled to be conducted at an upcoming Board meeting to those interested parties who have requested such notice in writing. The Public

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Agenda Notice may be mailed via electronic mail or the U.S. Postal Service, and must be mailed at least 10 days prior to the scheduled Board meeting to which it relates. The Public Agenda Notice must also be available for public viewing on the Internet at www.boe.ca.gov.

(b) The Public Agenda Notice must include:

- (1) The name, address, and telephone number of Board Proceedings Staff who can provide further information prior to the meeting;
- (2) The address of the Internet site where notices are made available; and
- (3) A specific agenda for the meeting, containing a brief description of the matters and other items of business to be conducted or discussed in either open or closed session. A description of a matter or other item of business to be conducted or discussed in closed session shall include a citation to the specific statutory authority under which a closed session is being held.

(c) A Public Agenda Notice may contain additional information that is not described in subdivision (b).

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code section 11125.

Article 4: Conduct of the Board Meeting and Burden of Proof

5540 Conduct of the Board Meeting.

5541 Burden of Proof.

5540 Conduct of the Board Meeting.

(a) Board meetings are conducted in accordance with the following laws:

- (1) Bagley-Keene Open Meeting Act (Gov. Code, §§ 11120-11132), which requires the Board to hold public meetings;
- (2) Government Code section 15625, which prohibits Board Members and Board employees from engaging in certain economic activities that are incompatible with their duties to the Board and create a conflict of interest;
- (3) The Quentin L. Kopp Conflict of Interest Act of 1990 (Gov., Code § 15626), as interpreted by California Code of Regulations, title 18, sections 7001 through 7011, which requires Board Members to disclose certain political contributions and disqualifies Board Members from participating in certain adjudicatory proceedings; and

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(4) The Political Reform Act (Gov. Code, § 81000, et seq.), which requires Board Members and Board employees to disclose certain financial interests that may create a conflict of interest, and prohibits Board Members and Board employees from making, participating in making, or in any way using their official position to influence a decision in which they know or should know that they have a financial interest.

(b) The public may attend those portions of Board meetings that are conducted during open session. If a person or persons, including a party or parties to a matter, willfully interrupt any portion of a Board meeting, the Board Chair may order the removal of such person or persons from the meeting.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code sections 11120-11132, 15609, 15625, 15626, 81000-91014.

5541 Burden of Proof.

(a) Except as otherwise specifically provided by law, the burden of proof is upon the taxpayer as to all issues of fact.

(b) In any proceeding involving the issue of fraud with intent to evade tax, the burden of proof as to that issue is upon the Department.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 270, 742, 1840, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, 60352. History: California Code of Regulations, title 18, section 5080.

Article 5: Voting and Decisions

5550 Quorum.

5551 Voting and Decisions.

5550 Quorum.

A quorum must be present for the Board to take any action.

(a) Any three Board Members present at a meeting constitutes a quorum. For purposes of this chapter, a Board Member is present at a meeting, if the Board Member is participating in the meeting via teleconference pursuant to section 5521.

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- (b) When a Board Member is disqualified from participating in a decision under the contribution disclosure statute (Gov. Code, § 15626), or the Political Reform Act (Gov. Code, § 81000, et seq.), that Board Member is not counted for purposes of a quorum.
- (c) If a deputy designated by the Controller pursuant to Government Code section 7.6 or 7.9 (as interpreted by the Attorney General) is not authorized to participate in a decision because the matter before the Board is a constitutional matter, the deputy is not counted for purposes of a quorum.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: California Constitution, article XIII, section 17; Government Code sections 7.6, 7.9, 11122.5, 15606, 15626, 81000-91014. History: California Code of Regulations, title 18, section 5072.

5551 Voting and Decisions.

- (a) At the conclusion of an oral hearing, the Board may vote to decide the matter, take it under submission and decide it later at the same meeting or at a subsequent meeting, or continue the hearing to a later date. The Board may also adopt a Memorandum Opinion in a matter subject to chapter 2 or 3 of this division, or a Summary Decision or Formal Opinion in a matter subject to chapter 4 of this division, or direct Appeals Staff to draft a Memorandum Opinion, Formal Opinion, or Summary Decision and submit the opinion or decision to the Board for consideration as a non-appearance matter at a subsequent meeting. A Formal Opinion or Memorandum Opinion adopted by the Board may be cited as precedent in any matter or other proceeding before the Board, unless the opinion has been depublished, overruled, or superseded. Summary Decisions may not be cited as precedent in any matter or other proceeding before the Board.

(b) Dissenting and Concurring Opinions.

- (1) If a Memorandum Opinion or Formal Opinion is presented to the Board for adoption, any Board Member may:

- (A) Submit a Dissenting Opinion setting forth the Board Member's rationale for disagreeing with the Memorandum Opinion or Formal Opinion; or
- (B) Submit a Concurring Opinion setting forth the Board Member's rationale for agreeing with the result reached in the decision, if different than the rationale set forth in the Memorandum Opinion or Formal Opinion.

- (2) A Dissenting Opinion or Concurring Opinion submitted under paragraph (1) of this subdivision is deemed to be adopted on the same date as the

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Memorandum Opinion or Formal Opinion to which it relates is adopted, and is publishable as a supplement to the Memorandum Opinion or Formal Opinion. A Dissenting Opinion or Concurring Opinion may be cited and relied upon in the same manner as a dissent or concurrence published in an opinion of the California Supreme Court or California Courts of Appeal.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: California Constitution, article XIII, section 17; Government Code sections 7.9, 11122.5, 11125, 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581. History: California Code of Regulations, title 18, section 5081.

Article 6: Post Hearing Notices and Petitions for Rehearing

5560	<u>Notice of Board Decision.</u>
5561	<u>Petition for Rehearing.</u>
5562	<u>Recommendation on Petition for Rehearing.</u>
5563	<u>Rehearings.</u>

5560 Notice of Board Decision.

- (a) Generally. All parties to a proceeding will be notified in writing of the Board's decision. The notice will contain the determined value, tax, fee, penalty or interest owed.
- (1) Business Taxes: In general, notice of the Board's decision will be mailed to all parties within 45 days from the date of the Board's decision. Notice of a decision denying a claim for refund will be mailed to all parties within 30 days from the date of the Board decision.
- (2) Appeals from actions of the Franchise Tax Board: In general, a copy of the decision or opinion prepared pursuant to article 5 of chapter 4 will be mailed to all parties within 3 business days from the date of the Board's decision.

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- (3) Property Tax: In general, a Notice of Decision will be mailed within 30 days from the date of the Board's decision.
- (b) Finality of Business Taxes Decisions. The Board's decision on a matter subject to chapter 2 of this division shall become final 30 days after the date notice of the Board's decision is mailed to the taxpayer unless, within that 30-day period, one of the following occurs:
- (1) A party to the petition or appeal files a Petition for Rehearing.
 - (2) The Board Chair orders the Chief of Board Proceedings to hold the decision in abeyance and notify all parties of the order.
- (c) Finality of Property Tax Decisions. Chapter 3 of this division applies to the finality of decisions on property tax petitions.
- (d) Appeals from the Franchise Tax Board. Chapter 4 of this division applies to the finality of decisions and requests for rehearings on appeals from actions of the Franchise Tax Board.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 744, 749, 1842, 5148, 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, sections 5081.2, 5082.

5561 Petition for Rehearing.

- (a) Generally. A taxpayer with a matter subject to chapter 2 of this division may file a Petition for Rehearing within 30 days of the date on which notice of the Board's decision is mailed to the taxpayer. The petition must:
- (1) Identify an irregularity in the Board's proceedings that prevented the fair consideration of the matter;

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- (2) Identify an accident or surprise that occurred, which ordinary caution could not have prevented;
 - (3) Identify newly discovered, relevant evidence, which the party requesting the rehearing could not have reasonably discovered and provided prior to the Board's decision; or
 - (4) Demonstrate that there is insufficient evidence to justify the decision or the decision is contrary to law.
- (b) The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of Petitions for Rehearing and related documents. A Petition for Rehearing or related document may be filed electronically pursuant to this section if an electronic copy of such document is transmitted to the Board Proceedings Division in accordance with instructions provided on the Board's website at www.boe.ca.gov.

A Petition for Rehearing or related document may also be hand delivered to the Board's headquarters at 450 N Street, in Sacramento, California, or mailed to the address provided below:

Board Proceedings Division, MIC: 80
State Board of Equalization
450 N Street
P.O. Box 942879
Sacramento, CA 94279-0081

- (c) Acceptance or Rejection of the Petition for Rehearing.
- (1) Upon receipt of a Petition for Rehearing, the Chief of Board Proceedings must determine whether the Petition for Rehearing is timely. The Chief of Board Proceedings may consult with Appeals Staff in making this determination.
 - (2) If the Petition for Rehearing is found to be timely, the Chief of Board Proceedings must accept the Petition for Rehearing and mail a letter to all parties acknowledging the acceptance.
 - (3) If the Chief of Board Proceedings determines that the Petition for Rehearing is not timely, the Chief of Board Proceedings must reject the Petition for Rehearing and will advise the taxpayer regarding alternative rights or remedies.
- (d) Chapter 4 of this division applies to Petitions for Rehearing filed with regard to appeals from actions of the Franchise Tax Board.

Note: Authority: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6981, 7657,

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7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12977, 19048, 19104, 19334, 19346, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, sections 5082, 5082.1.

5562 Recommendation on Petition for Rehearing.

- (a) The Appeals Division should prepare and submit a recommendation to grant or deny a Petition for Rehearing to the Chief of Board Proceedings and parties to the matter at issue generally within 90 days from the date of the letter accepting the Petition for Rehearing.
- (b) The recommendation on Petition for Rehearing will be submitted to the Board for consideration as a non-appearance matter.
- (c) The Chief of Board Proceedings must notify all the parties to the matter at issue of the Board's decision.
 - (1) If the Board grants a rehearing based on the recommendation of the Appeals Division, or another rationale, then the Board's prior decision will be held in abeyance pending the resolution of the rehearing.
 - (2) If the Board denies a rehearing based on the recommendation of the Appeals Division, or another rationale, then the Board's prior decision becomes final 30 days from the date the Chief of Board Proceedings mails the notice of the denial of the Petition for Rehearing.
- (d) Chapter 4 of this division applies to Decisions on Petitions for Rehearing with regard to appeals from the actions of the Franchise Tax Board.

Note: Authority: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12977, 19048, 19104, 19334, 19346, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455,

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38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521, 60581; California Code of Regulations, title 18, sections 1702, 1705.1. History: California Code of Regulations, title 18, section 5082.1.

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5563 Rehearings.

- (a) If the Board grants a rehearing in a matter subject to chapter 2 of this division, the Chief of Board Proceedings will:
 - (1) Consult with the Appeals Staff to determine a briefing schedule appropriate for the rehearing; and
 - (2) Inform all parties regarding such briefing schedule in writing.
- (b) Chapter 4 of this division applies to rehearings granted in appeals from actions of the Franchise Tax Board.

Note: Authority: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12977, 19048, 19104, 19334, 19346, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521, 60581; California Code of Regulations, title 18, sections 1702, 1705.1.

Article 7: Correspondence, Public Hearing Records, and Copies

- 5570 Mailing Address.
- 5571 Timeliness of Documents.
- 5572 Hearing Record.
- 5573 Waiver of Confidentiality.
- 5574 Request for Portion of Oral Hearing Conducted During Closed Session.
- 5575 Privilege.
- 5576 Fees: Filing, Transcripts, and Copies.

5570 Mailing Address.

The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of all correspondence during the hearing process. Correspondence may be filed electronically pursuant to this section if an electronic copy of such correspondence is transmitted to the Board Proceedings Division in accordance with instructions provided on the Board's website at www.boe.ca.gov.

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Correspondence during the hearing process may also be hand delivered to the Board's headquarters at 450 N Street, in Sacramento, California, or mailed to the following address:

Board Proceedings Division, MIC: 80
State Board of Equalization
450 N Street
P. O. Box 942879
Sacramento, CA 94279-0081

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. History: California Code of Regulations, title 18, section 5071.

5571 Timeliness of Documents.

- (a) A document or other correspondence is timely if it is mailed to or received at the headquarters office of the State Board of Equalization within the time specified by the particular statute or regulation under which the document is filed.
- (b) In the absence of other evidence, the post-mark date or the date of delivery to a delivery service, as defined in section 5511 of this chapter, is considered the mailing date. If the last day for mailing or delivering a document falls on a Saturday, Sunday or holiday, the time for mailing or delivering such document is extended to the next business day.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code section 254.5, 270, 724, 742, 1840, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, 60352. History: California Code of Regulations, title 18, section 5074.5.

5572 Hearing Record.

- (a) Meetings of the Board are held in accordance with the Bagley-Keene Open Meeting Act (Gov. Code, §§ 11120-11132). Public Agenda Notices issued for, minutes and transcripts of, and documents incorporated into the record of oral hearings conducted during open session at public meetings are public records and open to public inspection. Documents to which a waiver described in section 5573 applies are also disclosable public records.

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(b) Minutes of public meetings are the official record of each meeting. Minutes are presented to the Board for approval. The approved minutes are posted on the Internet at www.boe.ca.gov and a complete set of approved minutes are bound into one or more volumes. The bound volumes of Board minutes are the permanent record of Board actions. They are available for review in the Board Proceedings Division and the State Archives.

(c) Transcripts.

- (1) In general, the Board records its oral hearings. However, the recordings are not generally transcribed. Transcripts of hearings, administrative sessions, and Chief Counsel Matters are prepared only upon written request.
- (2) Interested persons may submit a written request for Board Staff to prepare transcripts described in paragraph (1) of this subdivision. Such requests must specifically identify the matters to be transcribed.
- (3) If Board Staff is able to prepare a transcript of a recorded hearing, the Board will charge a fee to prepare the requested transcript in accordance with section 5576.
- (4) The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of requests for transcripts. A request for a transcript may be filed electronically pursuant to this section if an electronic copy of such document is transmitted to the Board Proceedings Division in accordance with instructions provided on the Board's website at www.boe.ca.gov. Written requests for transcripts may also be hand delivered to the Board's headquarters at 450 N Street, in Sacramento, California, or mailed to the following address:

State Board of Equalization
Attn: Transcript Coordinator
Board Proceedings Division, MIC: 80
P. O. Box 942879
Sacramento, CA 94279-0081
- (5) A transcript prepared pursuant to this section is a public record and subject to disclosure.
- (6) Completed transcripts, untranscribed shorthand notes, and recordings are retained up to 12 years following the hearing date. Written requests for copies of previously completed transcripts should be sent to the address provided in paragraph (4) of this subdivision. The Board will charge a fee in accordance with section 5576 for copying a completed transcript.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public

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Resources Code sections 42475, 42881. Reference: California Constitution, article XIII, section 11; Government Code sections 6254, 11124.1, 11125.1, 15606, 15619, 15640; Revenue and Taxation Code sections 251, 833, 1840, 7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, 60609; Public Resources Code sections 42475, 42881. History: California Code of Regulations, title 18, sections 5083, 5085.

5573 Waiver of Confidentiality.

Oral hearings are generally conducted during open session at public meetings held in accordance with Government Code sections 11120 and 11123.

- (a) Appeals from Actions of the Franchise Tax Board. The filing of an appeal under chapter 4 constitutes a waiver of the appellant's right to confidentiality with regard to all of the information provided to the Board by the appellant or the Franchise Tax Board, including information contained in a hearing summary prepared under section 5444.
- (b) Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees. The filing of a written request for an oral hearing before the Board under chapter 2 constitutes a waiver of the taxpayer's right to confidentiality with regard to information provided to or obtained by the Board that is actually disclosed on the transcript of the taxpayer's oral hearing before the Board or included in the hearing summary prepared for the taxpayer's oral hearing before the Board.
- (c) Property Taxes.
 - (1) A taxpayer waives its right to confidentiality when the taxpayer:
 - (A) Files a petition described in section 5310, subdivision (a)(1), (3), or (4) under article 1, 3, or 4 of chapter 3, and submits a written request for an oral hearing before the Board; or
 - (B) Files an application described in section 5310, subdivision (a)(2) under article 2 of chapter 3.
 - (2) The waiver described in paragraph (1) of this subdivision only applies to:
 - (A) The taxpayer's petition or application filed under chapter 3 of this division, and any documents filed in support of the petition or application;
 - (B) Any briefs filed in response to or in support of the taxpayer's petition or application, and any documents filed in support of such briefs;
 - (C) The hearing summary or summary decision prepared for the taxpayer's oral hearing before the Board; and

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- (D) Any other information provided to or obtained by the Board that is actually disclosed on the transcript of the taxpayer's oral hearing before the Board.

(d) Effective Date of Waiver.

- (1) A waiver described in subdivision (b) or (c) of this section is effective on the date the Board issues its first Public Agenda Notice providing public notice of the date and time of the taxpayer's oral hearing to which the waiver applies.
- (2) A waiver described in subdivision (b) or (c) may be rescinded by the taxpayer at any time before it becomes effective, if the taxpayer agrees to waive its oral hearing before the Board. At the time a taxpayer waives an oral hearing under this paragraph, the taxpayer may request that the Board decide the taxpayer's matter on the basis of the written record on file without an oral hearing or dismiss the taxpayer's matter.

(e) Exceptions.

(1) Protection from Identity Theft.

(A) The waivers described in subdivisions (a), (b), and (c) do not apply to any person's address, telephone number, social security number, federal identification number, or other account number, and such information will not be provided to the public in response to a request made pursuant to the California Public Records Act (Gov. Code, §§ 6250 et seq.).

(B) Nothing in this paragraph prohibits any party to a Board hearing, Board Members, or Board Staff from referring to information described in this paragraph in briefs filed under this division, or in a manner that will not disclose any person's actual address, telephone number, social security number, federal identification number, or bank account number at an oral hearing conducted during an open session at a public meeting.

(2) Closed Session. The waivers described in subdivisions (b) and (c) do not apply to:

(A) Information that is only discussed during a portion of an oral hearing conducted during a closed session held pursuant to Government Code section 11126, and the procedures contained in section 5574; and

(B) The portion of a hearing summary, if any, containing information that is only scheduled to be discussed during a closed session.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public

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Resources Code sections 42475, 42881. Reference: California Constitution, article XIII, section 11; Government Code sections 6254, 11124.1, 11125.1, 15606, 15619, 15640; Revenue and Taxation Code sections 251, 743, 833, 1840, 7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, 60609; Public Resources Code sections 42475, 42881. History: California Code of Regulations, title 18, sections 5083, 5085.

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5574 Request for Portion of Oral Hearing Conducted During Closed Session.

(a) Board's Discretion to Conduct Oral Hearings During Closed Session.

(1) In general, the Board may conduct portions of oral hearings requested under chapter 2 or chapter 3 of this division during a closed session held under Government Code section 11126.

(2) The Board may not conduct oral hearings requested under the following provisions during a closed session:

(A) Article 2 of chapter 3 of this division regarding the assessment of unitary or non-unitary property, or an electric generation facility as defined in Revenue and Taxation Code section 721.5.

(B) Chapter 4 of this division regarding appeals from the actions of the Franchise Tax Board.

(b) Contents of Requests. Taxpayers may request that the Board conduct a portion of an oral hearing requested under chapter 2 or chapter 3 during a closed session. Such a request must be in writing, specifically identify the matter for which the taxpayer's oral hearing was requested, and describe the trade secrets or other confidential research, development, or commercial information, which is likely to be presented at the taxpayer's oral hearing, the disclosure of which will cause unwarranted annoyance, embarrassment, or oppression.

(c) Manner of Filing and Due Date for Requests. Requests described in subdivision (b) must be filed with the Chief of Board Proceedings in the manner provided in section 5570 no later than the due date of the Response to Notice of Board Hearing provided in section 5522.6.

(d) Review of Requests.

(1) Chief Counsel's Review and Recommendation. Upon receipt of a taxpayer's request for the Board to conduct a portion of an oral hearing during a closed session, the Chief Counsel will:

(A) Review the request to determine whether the matter involves trade secrets or other confidential research, development, or commercial information the disclosure of which would cause unwarranted annoyance, embarrassment, or oppression to any person;

(B) Prepare a written recommendation to grant or deny the request; and

(C) Submit the taxpayer's request along with the recommendation to the Board Chair.

(2) Board Chair's Discretion. Upon receipt of a taxpayer's request under subdivision (b) and the Chief Counsel's recommendation to grant or deny the

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request, the Board Chair may direct the Chief of Board Proceedings to schedule the taxpayer's oral hearing so that a portion of the hearing is conducted during a closed session, if the Board Chair determines that:

- (A) The matter involves trade secrets or other confidential research, development, or commercial information the disclosure of which would cause unwarranted annoyance, embarrassment, or oppression to any person; and
 - (B) Such information is likely to be disclosed if the taxpayer's oral hearing is conducted solely during an open session at a public meeting.
- (3) If a portion of an oral hearing is scheduled to be conducted during a closed session pursuant to paragraph (2) of this subdivision, that portion of the oral hearing must proceed in closed session unless a majority of the quorum present during the closed session votes in favor of a motion to conduct the entire oral hearing during an open session.
- (4) If a motion is passed in accordance with paragraph (3) of this subdivision, the taxpayer's oral hearing must be rescheduled so that the entire hearing can be conducted during an open session at a public meeting, and the Chief of Board Proceedings shall issue a new Notice of Board Hearing in accordance with section 5522.6.
- (A) The waivers described in subdivision (b) or (c) of section 5573 are effective on the date the Board issues its first Public Agenda Notice providing public notice of the date and time of the taxpayer's rescheduled oral hearing.
 - (B) The waivers described in subdivision (b) or (c) of section 5573 may be rescinded by the taxpayer at any time before they become effective, if the taxpayer agrees to waive its oral hearing before the Board.
- (e) Notice of Board Chair's Decision. The Chief of Board Proceedings must notify the taxpayer of the Board Chair's decision on a request to conduct a portion of an oral hearing during a closed session no later than five days prior to the issuance of the Public Agenda Notice described in section 5573, subdivision (d).
- (f) Definitions. The phrase "trade secrets or other confidential research, development, or commercial information the disclosure of which will cause unwarranted annoyance, embarrassment, or oppression" must be interpreted in the same manner as the terms used therein are interpreted or defined for purposes of Code of Civil Procedure section 2031.060.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: California Constitution, article XIII, section 11; Government Code sections 6254, 11124.1, 11125.1, 15606, 15619, 15640; Revenue and

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Taxation Code sections 251, 743, 833, 1840, 7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, 60609; Public Resources Code sections 42475, 42881. History: California Code of Regulations, title 18, sections 5083, 5085.

5575 Privilege.

The waivers provided for in section 5573 do not abrogate the Board's privileges with regard to memoranda from attorneys in the Board's Legal Department and the Attorney General to Board Members that are confidential communications between client and lawyer as defined in Evidence Code section 952.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Government Code section 6254; Evidence Code sections 952, 954. History: California Code of Regulations, title 18, sections 5083, 5085.

5576 Fees: Filing, Transcripts, and Copies.

- (a) The Board does not charge a fee for the filing of any paper or the issuance of a subpoena.
- (b) Charges for transcripts of testimony heard before the Board shall be made at the rates specified in Government Code section 69950.
- (c) Copies, including certified copies, of records that the Board is permitted by law to divulge will be furnished to taxpayers and other interested persons at cost as specified in Government Code section 6253 and Civil Code section 1798.33.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42475, 42881. Reference: Civil Code section 1798.33; Government Code section 15613.